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16 INLAND EMPIRE WATERKEEPER and ORANGE COUNTY COASTKEEPER

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

INLAND EMPIRE WATERKEEPER, a  
program of ORANGE COUNTY  
WATERKEEPER; ORANGE COUNTY  
WATERKEEPER, a California non-profit  
corporation;

Plaintiffs,

v.

ROBERTSON'S READY MIX, LTD., a  
California Limited Partnership,

Defendant.

Civil Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

**(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 *et seq.*)**

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1 Inland Empire Waterkeeper and Orange County Coastkeeper (“Waterkeeper” or  
2 “Plaintiffs”), by and through its counsel, hereby allege:

3 **I. JURISDICTION, VENUE, AND RELATED CASES**

4 1. This is a civil suit brought under the citizen suit enforcement provision of  
5 the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act”  
6 or “CWA”). *See* 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the  
7 parties and this action pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and  
8 2201 (an action for declaratory and injunctive relief arising under the Constitution and  
9 laws of the United States).

10 2. On June 3, 2016, Waterkeeper issued a 60-day Notice of Violation and  
11 Intent to File Suit Under the Clean Water Act letter (“Notice Letter”) to Robertson’s  
12 Ready Mix, Ltd. (“Defendant”). The Notice Letter informed Defendant of its violations  
13 of California’s General Permit for Discharges of Storm Water Associated with Industrial  
14 Activities (*National Pollutant Discharge Elimination System (“NPDES”) General Permit*  
15 *No. CAS000001, Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-*  
16 *DWQ, as amended by Order No. 2014-0057-DWQ*) (hereinafter “Storm Water Permit”)  
17 and the Clean Water Act at its facility located at 27050 Watson Road, Sun City,  
18 California 92585 (“Facility”). The Notice Letter informed Defendant of Waterkeeper’s  
19 intent to file suit against Defendant to enforce the Storm Water Permit and the Clean  
20 Water Act.

21 3. The Notice Letter was also sent to the registered agent for Defendant, the  
22 Administrator of the United States Environmental Protection Agency (“EPA”), the  
23 Administrator of EPA Region IX, the Executive Director of the State Water Resources  
24 Control Board (“State Board”), and the Executive Officer of the Regional Water Quality  
25 Control Board, Santa Ana Region (“Regional Board”), as required by 40 C.F.R.  
26 § 135.2(a)(1) and Section 505(b) of the CWA, 33 U.S.C. § 1365(b)(1)(A). The Notice  
27 Letter is attached hereto as **Exhibit A** and is incorporated herein by reference.



1       4. More than sixty (60) days have passed since the Notice Letter was served on  
2 Defendant and the State and Federal agencies. Waterkeeper is informed and believes, and  
3 thereon alleges, that neither the EPA nor the State of California has commenced or is  
4 diligently prosecuting an action to redress the violations alleged in the Notice Letter and  
5 in this complaint. *See* 33 U.S.C. § 1365(b)(1)(B). This action is not barred by any prior  
6 administrative penalty under Section 309(g) of the CWA. 33 U.S.C. § 1319(g).

7       5. Venue is proper in the Central District of California pursuant to Section  
8 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are  
9 located within this judicial district.

10       6. Plaintiffs seek relief for Defendant's substantive and procedural violations of  
11 the Storm Water Permit and the Clean Water Act resulting from Defendant's operations  
12 at its Facility.

13       7. On April 25, 2016, Inland Empire Waterkeeper and Orange County  
14 Coastkeeper (collectively, "Waterkeeper") filed a Complaint for Declaratory and  
15 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
16 No. 5:16-cv-00825-DMG-JCx, *Inland Empire Waterkeeper et al. v. Robertson's Ready*  
17 *Mix, Ltd.*, which alleges substantive and procedural violations of the Storm Water Permit  
18 and the Clean Water Act resulting from Defendant's operations at an industrial facility  
19 located at 6120 20th Street, Riverside, California 92509. The parties and claims at issue  
20 in Waterkeeper's pending complaint dated April 25 are related to the parties and claims at  
21 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has  
22 been submitted concurrently herewith.

23       8. On May 25, 2016, Waterkeeper filed a Complaint for Declaratory and  
24 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
25 No. 5:16-cv-01085-DMG-JC, *Inland Empire Waterkeeper et al. v. Robertson's Ready*  
26 *Mix, Ltd.*, which alleges substantive and procedural violations of the Storm Water Permit  
27 and the Clean Water Act resulting from Defendant's operations at an industrial facility  
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1 located at 2601 N. Alder Avenue, Rialto, California 92376. The parties and claims at  
2 issue in Waterkeeper's pending complaint dated May 25 are related to the parties and  
3 claims at issue described herein. A notice of related cases pursuant to Civil Local Rule  
4 83-1.3.1 has been submitted concurrently herewith.

5 9. On May 25, 2016, Orange County Coastkeeper ("Coastkeeper") filed a  
6 Complaint for Declaratory and Injunctive Relief and Civil Penalties in the Central  
7 District of California Civil Case No. SA CV 16-961-DMG-JCx, *Orange County*  
8 *Coastkeeper v. Robertson's Ready Mix, Ltd.*, which alleges substantive and procedural  
9 violations of the Storm Water Permit and the Clean Water Act resulting from  
10 Defendant's operations at an industrial facility located at 310 N. Townsend Street, Santa  
11 Ana, California, 92703. The parties and claims at issue in Waterkeeper's pending  
12 complaint dated May 25 are related to the parties and claims at issue described herein. A  
13 notice of related cases pursuant to Civil Local Rule 83-1.3.1 has been submitted  
14 concurrently herewith.

15 10. On August 3, 2016, Coastkeeper filed a Complaint for Declaratory and  
16 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
17 No. \_\_\_\_\_, *Orange County Coastkeeper v. Robertson's Ready Mix, Ltd.*, which  
18 alleges substantive and procedural violations of the Storm Water Permit and the Clean  
19 Water Act resulting from Defendant's operations at an industrial facility located at 16081  
20 Construction Circle W., Irvine, California 92606. The parties and claims at issue in  
21 Waterkeeper's pending complaint dated August 3 are related to the parties and claims at  
22 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has  
23 been submitted concurrently herewith.

24 11. On August 3, 2016, Waterkeeper filed a Complaint for Declaratory and  
25 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
26 No. \_\_\_\_\_, *Inland Empire Waterkeeper et al. v. Robertson's Ready Mix, Ltd.*,  
27 which alleges substantive and procedural violations of the Storm Water Permit and the  
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1 Clean Water Act resulting from Defendant's operations at an industrial facility located at  
2 14250 Old 215 Frontage Road, Moreno Valley, California 92552. The parties and claims  
3 at issue in Waterkeeper's pending complaint dated August 3 are related to the parties and  
4 claims at issue described herein. A notice of related cases pursuant to Civil Local Rule  
5 83-1.3.1 has been submitted concurrently herewith.

6 12. On August 3, 2016, Coastkeeper filed a Complaint for Declaratory and  
7 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
8 No. \_\_\_\_\_, *Orange County Coastkeeper v. Robertson's Ready Mix, Ltd.*, which  
9 alleges substantive and procedural violations of the Storm Water Permit and the Clean  
10 Water Act resulting from Defendant's operations at an industrial facility located at 116  
11 Rincon Ct., San Clemente, California 92672. The parties and claims at issue in  
12 Waterkeeper's pending complaint dated August 3 are related to the parties and claims at  
13 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has  
14 been submitted concurrently herewith.

15 13. On August 3, 2016, Waterkeeper filed a Complaint for Declaratory and  
16 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
17 No. \_\_\_\_\_, *Inland Empire Waterkeeper et al. v. Robertson's Ready Mix, Ltd.*,  
18 which alleges substantive and procedural violations of the Storm Water Permit and the  
19 Clean Water Act resulting from Defendant's operations at an industrial facility located at  
20 1675 S. State St., San Jacinto, California 92383. The parties and claims at issue in  
21 Waterkeeper's pending complaint dated August 3 are related to the parties and claims at  
22 issue described herein. A notice of related cases pursuant to Civil Local Rule 83-1.3.1 has  
23 been submitted concurrently herewith.

24 14. On August 3, 2016, Waterkeeper filed a Complaint for Declaratory and  
25 Injunctive Relief and Civil Penalties in the Central District of California Civil Case  
26 No. \_\_\_\_\_, *Inland Empire Waterkeeper et al. v. Robertson's Ready Mix, Ltd.*,  
27 which alleges substantive and procedural violations of the Storm Water Permit and the  
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1 Clean Water Act resulting from Defendant's operations at an industrial facility located at  
2 452 W. 5th Luis Estrada Road, Beaumont, California 92223. The parties and claims at  
3 issue in Waterkeeper's pending complaint dated August 3 are related to the parties and  
4 claims at issue described herein. A notice of related cases pursuant to Civil Local Rule  
5 83-1.3.1 has been submitted concurrently herewith.

6 **II. PARTIES**

7 **A. Inland Empire Waterkeeper and Orange County Coastkeeper.**

8 15. Inland Empire Waterkeeper is a program of Orange County Coastkeeper.  
9 Inland Empire Waterkeeper's office is located at 6876 Indiana Avenue, Suite D,  
10 Riverside, California 92506.

11 16. Orange County Coastkeeper is a non-profit public benefit corporation  
12 organized under the laws of the State of California. Orange County Coastkeeper's office  
13 is located at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626.

14 17. Together, Orange County Coastkeeper and Inland Empire Waterkeeper have  
15 over 2,000 members who live and/or recreate in and around the Santa Ana River  
16 watershed. Waterkeeper is dedicated to the preservation, protection, and defense of the  
17 environment, wildlife, and natural resources of local surface waters. To further these  
18 goals, Waterkeeper actively seeks federal and state agency implementation of the Clean  
19 Water Act and, where necessary, directly initiates enforcement actions on behalf of itself,  
20 its members, and others.

21 18. Waterkeeper's members use and enjoy the Santa Ana River and its  
22 tributaries for fishing, boating, swimming, bird watching, picnicking, viewing wildlife,  
23 sailing, kayaking, hiking, engaging in scientific study, including monitoring and research  
24 activities, and/or for aesthetic enjoyment.

25 19. Defendant's failure to comply with the procedural and substantive  
26 requirements of the Storm Water Permit and/or the Clean Water Act, including but not  
27 limited to Defendant's discharges of polluted storm water and non-storm water from the  
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1 Facility degrade water quality and harm aquatic life in the Santa Ana River, and impair  
2 Waterkeeper's members' use and enjoyment of those waters.

3 20. The violations of the Storm Water Permit and Clean Water Act at the Facility  
4 are ongoing and continuous. Thus, the interests of Waterkeeper's members have been, are  
5 being, and will continue to be adversely affected by Defendant's failure to comply with the  
6 Storm Water Permit and the Clean Water Act. The relief sought herein will redress the  
7 harms to Waterkeeper caused by Defendant's activities.

8 21. Continuing commission of the acts and omissions alleged herein will  
9 irreparably harm Waterkeeper's members, for which harm they have no plain, speedy, or  
10 adequate remedy at law.

11 **B. The Owner and/or Operator of the Robertson's Facility.**

12 22. Waterkeeper is informed and believes, and thereon alleges, that Robertson's  
13 Ready Mix, Ltd. is an owner of the Facility.

14 23. Waterkeeper is informed and believes, and thereon alleges, that Robertson's  
15 Ready Mix, Ltd. has owned the Facility since at least March 30, 1992.

16 24. Waterkeeper is informed and believes, and thereon alleges, that Robertson's  
17 Ready Mix, Ltd. is an operator of the Facility.

18 25. Waterkeeper is informed and believes, and thereon alleges, that Robertson's  
19 Ready Mix, Ltd. has operated the Facility since at least March 30, 1992.

20 26. Waterkeeper refers to Robertson's Ready Mix, Ltd. herein as the "Facility  
21 Owner and/or Operator."

22 27. Waterkeeper is informed and believes, and thereon alleges, that Robertson's  
23 Ready Mix, Ltd. is an active limited partnership registered in California.

24 28. Waterkeeper is informed and believes, and thereon alleges, that the name  
25 and address of the Registered Agent for Robertson's Ready Mix, Ltd. is Mervyn  
26 Encarnacion, 200 S. Main Street, Suite 200, Corona, California 92882.

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1 **III. LEGAL BACKGROUND**

2 **A. The Clean Water Act.**

3 29. The Clean Water Act requires point source discharges of pollutants to  
4 navigable waters be regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R.  
5 § 122.26(c)(1).

6 30. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the  
7 discharge of any pollutant into waters of the United States unless the discharge complies  
8 with various enumerated Sections of the CWA. Among other things, Section 301(a)  
9 prohibits discharges not authorized by, or in violation of, the terms of a NPDES permit  
10 issued pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342(b).

11 31. “Waters of the United States” are defined as “navigable waters,” and “all  
12 waters which are currently used, were used in the past, or may be susceptible to use in  
13 interstate or foreign commerce, including waters which are subject to the ebb and flow of  
14 the tide.” 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

15 32. The “discharge of a pollutant” means, among other things, “any addition of  
16 any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12); *see* 40  
17 C.F.R. § 122.2.

18 33. The EPA promulgated regulations defining “waters of the United States.”  
19 *See* 40 C.F.R. § 122.2. The EPA interprets waters of the United States to include not only  
20 traditionally navigable waters, but also other waters, including waters tributary to  
21 navigable waters, wetlands adjacent to navigable waters, and intermittent streams that  
22 could affect interstate commerce.

23 34. The Clean Water Act confers jurisdiction over waters that are tributaries to  
24 traditionally navigable waters where the water at issue has a significant nexus to the  
25 navigable water. *See Rapanos v. United States*, 547 U.S. 715 (2006); *see also N. Cal.*  
26 *River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007).

27 35. A significant nexus is established if the “[receiving waters], either alone or  
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1 in combination with similarly situated lands in the region, significantly affect the  
2 chemical, physical, and biological integrity of other covered waters.” *Rapanos*, 547 U.S.  
3 at 779; *N. Cal. River Watch*, 496 F.3d at 999-1000.

4 36. A significant nexus is also established if waters that are tributary to  
5 navigable waters have flood control properties, including functions such as the reduction  
6 of flow, pollutant trapping, and nutrient recycling. *Rapanos*, 547 U.S. at 782; *N. Cal.*  
7 *River Watch*, 496 F.3d at 1000-1001.

8 37. Section 505(a)(1) and Section 505(f) of the Clean Water Act provide for  
9 citizen enforcement actions against any “person” who is alleged to be in violation of an  
10 “effluent standard or limitation . . . or an order issued by the Administrator or a State with  
11 respect to such a standard or limitation.” See 33 U.S.C. §§ 1365(a)(i) and 1365(f).

12 38. Robertson’s Ready Mix, Ltd. is a “person” within the meaning of Section  
13 502(5) of the Clean Water Act. See 33 U.S.C. § 1362(5).

14 39. An action for injunctive relief is authorized under Section 505(a) of the  
15 Clean Water Act. See 33 U.S.C. § 1365(a).

16 40. Each separate violation of the Clean Water Act subjects the violator to a  
17 penalty of up to \$37,500 per day, pursuant to Sections 309(d) and 505 of the CWA. See  
18 33 U.S.C. §§ 1319(d) and 1365(a); Adjustment of Civil Monetary Penalties for Inflation,  
19 40 C.F.R. § 19.4.

20 41. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits  
21 prevailing or substantially prevailing parties to recover litigation costs, including  
22 attorneys’ fees, experts’ fees, and consultants’ fees.

23 **B. California’s Storm Water Permit.**

24 42. Section 402(p) of the Clean Water Act establishes a framework for  
25 regulating industrial storm water discharges under the NPDES permit program. 33 U.S.C.  
26 § 1342(p).

27 43. Section 402(b) of the Clean Water Act allows each state to administer its  
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own EPA-approved NPDES permit program for regulating the discharge of pollutants, including discharges of polluted storm water. *See* 33 U.S.C. § 1342(b). States with approved NPDES permit programs are authorized by section 402(b) to regulate industrial storm water discharges through individual NPDES permits issued to dischargers and/or through the issuance of a statewide general NPDES permit applicable to all industrial storm water dischargers. *See id.*

44. California is a state authorized by EPA to issue NPDES permits.

45. In California, the State Board is charged with regulating pollutants to protect California's water resources. *See* Cal. Water Code § 13001.

46. The Storm Water Permit is a statewide general NPDES permit issued by the State Board pursuant to the Clean Water Act.

47. Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Waterkeeper refers to as the "1997 Permit."

48. On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water Permit was reissued, which Waterkeeper refers to as the "2015 Permit."

49. The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its terms are as stringent, or more stringent, than the terms of the 1997 Permit. *See* 2015 Permit, Findings, ¶ 6.

50. In order to discharge storm water lawfully in California, industrial dischargers must secure coverage under the Storm Water Permit and comply with its terms, or obtain and comply with an individual NPDES permit. 1997 Permit, Finding #2; 2015 Permit Findings, ¶ 12. Prior to beginning industrial operations, dischargers are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI") to the State Board. *See* 1997 Permit, Finding #3; *see also* 2015 Permit, Findings, ¶ 17.

51. Violations of the Storm Water Permit are violations of the Clean Water Act.



1 See 1997 Permit, Section C(1) (Standard Provisions); *see also* 2015 Permit, Section  
2 XXI(A) (Duty to Comply).

3 **C. The Storm Water Permit Discharge Prohibitions, Effluent Limitations,**  
4 **and Receiving Water Limitations.**

5 52. The Storm Water Permit contains certain absolute prohibitions. The Storm  
6 Water Permit prohibits the direct or indirect discharge of materials other than storm water  
7 (“non-storm water discharges”), which are not otherwise authorized by an NPDES  
8 permit, to the waters of the United States. *See* 1997 Permit, Discharge Prohibition A(1);  
9 *see also* 2015 Permit, Discharge Prohibition III(B).

10 53. The Storm Water Permit Effluent Limitations require dischargers covered by  
11 the Storm Water Permit to reduce or prevent pollutants in storm water discharges through  
12 the implementation of Best Available Technology Economically Achievable (“BAT”) for  
13 toxic or non-conventional pollutants, and Best Conventional Pollutant Control  
14 Technology (“BCT”) for conventional pollutants. Toxic pollutants are listed at 40 C.F.R.  
15 § 401.15 and include copper, lead, and zinc, among others. Conventional pollutants are  
16 listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand (“BOD”), total  
17 suspended solids (“TSS”), oil and grease (“O&G”), and pH. *See* 1997 Permit, Effluent  
18 Limitation B(3); *see also* 2015 Permit, Section V(A).

19 54. Pursuant to the CWA and the Storm Water Permit, dischargers must employ  
20 Best Management Practices (“BMPs”) that constitute BAT and BCT to reduce or  
21 eliminate storm water pollution. 33 U.S.C. § 1311(b); 1997 Permit, Effluent Limitation  
22 B(3); 2015 Permit, Effluent Limitation V(A).

23 55. EPA’s NPDES Storm Water Multi-Sector General Permit for Industrial  
24 Activities (“MSGP”) includes numeric benchmarks for pollutant concentrations in storm  
25 water discharges (“EPA Benchmarks”).

26 56. The EPA Benchmarks provide an objective standard to determine whether a  
27 facility’s BMPs are successfully developed and/or implemented. *See* MSGP, 80 Fed.



1 Reg. 34,403, 34,405 (June 16, 2015); MSGP, 73 Fed. Reg. 56,572, 56,574 (Sept. 29,  
2 2008); MSGP, 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30, 2000).

3 57. The EPA Benchmarks for the following parameters, among others, are as  
4 follows: pH – 6.0 – 9.0 standard units (“s.u.”); TSS – 100 mg/L; total organic carbon  
5 (“TOC”) – 110 mg/L; iron – 1.0 mg/L; nitrate plus nitrate as nitrogen (“N+N”) – 0.68  
6 mg/L; oil and grease – 15 mg/L; aluminum – 0.75 mg/L; and zinc – 0.13 mg/L.

7 58. Discharges from an industrial facility containing pollutant concentrations  
8 that exceed EPA Benchmarks indicate that the facility has not developed and/or  
9 implemented BMPs that meet BAT for toxic pollutants and/or BCT for conventional  
10 pollutants. *Id.*

11 59. The Storm Water Permit Receiving Water Limitations prohibit storm water  
12 discharges from adversely impacting human health or the environment. *See* 1997 Permit,  
13 Receiving Water Limitation C(1); *see also* 2015 Permit, Section VI(B).

14 60. Storm water discharges with pollutant levels that exceed levels known to  
15 adversely impact aquatic species and the environment are violations of Receiving Water  
16 Limitation C(1) of the 1997 Permit and Section VI(B) of the 2015 Permit.

17 61. The Storm Water Permit Receiving Water Limitations also prohibit storm  
18 water discharges that cause or contribute to an exceedance of any “applicable Water  
19 Quality Standard in a Statewide Water Quality Control Plan or the applicable Regional  
20 Board’s Basin Plan.” *See* 1997 Permit, Receiving Water Limitation C(2); *see also* 2015  
21 Permit, Receiving Water Limitation VI(A).

22 62. Water Quality Standards (“WQS”) are pollutant concentration levels  
23 determined by the State Board, the various regional boards, and the EPA to be protective  
24 of the beneficial uses of the waters that receive polluted discharges.

25 63. The State of California regulates water quality through the State Board and  
26 the nine Regional Boards. Each Regional Board maintains a separate Water Quality  
27 Control Plan which contains WQS for water bodies within its geographical area.



64. The Water Quality Control Plan for the Santa Ana River Basin ("Basin Plan") identifies the "Beneficial Uses" of water bodies in the region. The Facility discharges into a municipal storm drain system which then discharges to the San Jacinto River, Canyon Lake, Lake Elsinore, Temescal Creek Reach 6, Reach 5, Reach 4, Reach 3, Reach 2, Reach 1B, Reach 1A, Santa Ana River Reach 3, Reach 2, Reach 1, Tidal Prism of Santa Ana River, and finally into the Pacific Ocean ("Receiving Waters"). The existing and/or potential Beneficial Uses of the waters downstream of the Facility include: Water Contact Recreation; Non-contact Water Recreation; Agricultural Supply; Municipal and Domestic Supply; Groundwater Recharge; Warm Freshwater Habitat; Wildlife Habitat; and Rare, Threatened or Endangered Species. *See* Basin Plan at Table 3-1.

65. Surface waters that cannot support the Beneficial Uses of those waters listed in the Basin Plan are designated as impaired water bodies pursuant to Section 303(d) of the Clean Water Act. According to the 2012 303(d) List of Impaired Water Bodies, Canyon Lake is impaired for nutrients and pathogens; Temescal Creek Reach 1 is impaired for pH; Temescal Creek Reach 6 is impaired for Indicator Bacteria; and the Santa Ana River Reach 3 is impaired for copper, lead, and pathogens; and Santa Ana River Reach 2 is impaired for indicator bacteria.<sup>1</sup>

66. Discharges of pollutants at levels above WQS contribute to the impairment of the Beneficial Uses of the waters receiving the discharges.

67. WQS applicable to dischargers covered by the Storm Water Permit include, but are not limited to, those set out in the Basin Plan and in the Criteria for Priority Toxic Pollutants for the State of California ("CTR"), 40 C.F.R. § 131.38.

68. The Basin Plan provides that "[t]he pH of inland surface waters shall not be raised above 8.5 or depressed below 6.5 as a result of controllable water quality factors."

<sup>1</sup> 2012 Integrated Report – All Assessed Waters, *available at* [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2012.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml) (last accessed on May 9, 2016).



1 See Basin Plan, 4-18.

2 69. The Basin Plan provides that “[w]aste discharges shall not result in increases  
3 in COD levels in inland surface waters which exceed the values shown in Table 4-1 or  
4 which adversely affect beneficial uses.” See Basin Plan, 4-9.

5 70. The Basin Plan provides that “Inland surface waters shall not contain  
6 suspended or settleable solids in amounts which cause a nuisance or adversely affect  
7 beneficial uses as a result of controllable water quality factors.” See Basin Plan, 4-19.

8 71. The Basin Plan includes a toxicity standard which states that “[t]he  
9 concentrations of toxic pollutants in the water column, sediments or biota shall not  
10 adversely affect beneficial uses.” See Basin Plan, 4-20.

11 72. The CTR includes numeric criteria set to protect human health and the  
12 environment in the State of California. Water Quality Standards; Establishment of  
13 Numeric Criteria for Priority Toxic Pollutants for the State of California Factsheet, EPA-  
14 823-00-008 (April 2000), available at: <http://bit.ly/2aGpEGo>.

15 73. Discharges with pollutant levels in excess of the CTR criteria, the Basin Plan  
16 standards, and/or other applicable WQS are violations of Receiving Water Limitation  
17 C(2) of the 1997 Permit and Section VI(A) of the 2015 Permit.

18 **D. The Storm Water Permit Storm Water Pollution Prevention Plan**  
19 **Requirements.**

20 74. Dischargers must develop and implement a Storm Water Pollution  
21 Prevention Plan (“SWPPP”) at the time industrial activities begin. 1997 Permit, Section  
22 A(1)(a) and E(2); 2015 Permit, Sections I(I) (Finding 54), X(B). The SWPPP must  
23 identify and evaluate sources of pollutants associated with industrial activities that may  
24 affect the quality of storm water and authorized non-storm water discharges from the  
25 facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G). The SWPPP must  
26 identify and implement site-specific BMPs to reduce or prevent pollutants associated  
27 with industrial activities in storm water and authorized non-storm water discharges. 1997  
28



1 Permit, Section A(2); 2015 Permit, Section X(H). The SWPPP must include BMPs that  
2 achieve pollutant discharge reductions attainable via BAT and BCT. 1997 Permit, Order  
3 Section A(2); 2015 Permit, Section I(D) (Finding 32), Section X(C).

4 75. The SWPPP must include: a narrative description and summary of all  
5 industrial activity, potential sources of pollutants, and potential pollutants; a site map  
6 indicating the storm water conveyance system, associated points of discharge, direction  
7 of flow, areas of actual and potential pollutant contact, including the extent of pollution-  
8 generating activities, nearby water bodies, and pollutants control measures; a description  
9 of storm water management practices; a description of the BMPs to be implemented to  
10 reduce or prevent pollutants in storm water discharges and authorized non-storm water  
11 discharges; the identification and elimination of non-storm water discharges; the location  
12 where significant materials are being shipped, stored, received, and handled, as well as  
13 the typical quantities of such materials and the frequency with which they are handled; a  
14 description of dust and particulate-generating activities; and a description of individuals  
15 and their current responsibilities for developing and implementing the SWPPP. 1997  
16 Permit, Section A(1)-(10); 2015 Permit, Section X.

17 76. The objectives of the SWPPP are to identify and evaluate sources of  
18 pollutants associated with industrial activities that may affect the quality of storm water  
19 discharges, to identify and implement site-specific BMPs to prevent the exposure of  
20 pollutants to storm water, and to reduce or prevent the discharge of polluted storm water  
21 from industrial facilities. 1997 Permit, Section A(2); 2015 Permit, Section X.

22 77. The Storm Water Permit requires the discharger to evaluate the SWPPP on  
23 an annual basis and revise it as necessary to ensure compliance with the Storm Water  
24 Permit. 1997 Permit, Section A(9); 2015 Permit, Section X(A)(9). The Storm Water  
25 Permit also requires that the discharger conduct an annual comprehensive site compliance  
26 evaluation that includes a review of all visual observation records, inspection reports and  
27 sampling and analysis results, a visual inspection of all potential pollutant sources for  
28



1 evidence of, or the potential for, pollutants entering the drainage system, a review and  
2 evaluation of all BMPs to determine whether the BMPs are adequate, properly  
3 implemented and maintained, or whether additional BMPs are needed, and a visual  
4 inspection of equipment needed to implement the SWPPP. 1997 Permit, Sections  
5 A(9)(a)-(c); 2015 Permit, Section XV.

6 78. Section A(9)(d) of the 1997 Permit requires that the discharger submit an  
7 evaluation report that includes an identification of personnel performing the evaluation,  
8 the date(s) of the evaluation(s), necessary SWPPP revisions, a schedule for implementing  
9 SWPPP revisions, any incidents of non-compliance and the corrective actions taken, and  
10 a certification that the discharger is in compliance with the Storm Water Permit. 1997  
11 Permit, Section A(9)(d)(i)-(vi). If certification of compliance cannot be provided, the  
12 discharger must explain in the evaluation report why the facility is not in compliance with  
13 the Storm Water Permit. *Id.*, Section A(9)(d). The evaluation report shall be submitted as  
14 part of the Annual Report specified in Section B(14) of the Storm Water Permit. *Id.*

15 79. The SWPPP and site maps must be assessed annually and revised as  
16 necessary to ensure accuracy and effectiveness. 1997 Permit, Sections A(1), B(3)-(4);  
17 2015 Permit, Sections I(J) (Finding 55), X(B)(1).

18 **E. The Storm Water Permit Monitoring and Reporting Requirements.**

19 80. The 1997 Permit required facility operators to develop and implement a  
20 monitoring and reporting program ("M&RP") when industrial activities begin at a  
21 facility. 1997 Permit, Sections B(1)-(2) and E(3). The 2015 Permit requires  
22 implementation of an M&RP. 2015 Permit, Sections X(I) and XI. The M&RP must  
23 ensure that storm water discharges are in compliance with the Discharge Prohibitions,  
24 Effluent Limitations, and Receiving Water Limitations specified in the 1997 Permit. *See*  
25 1997 Permit, Section B(2); *see also* 2015 Permit, Section X(I). The M&RP must ensure  
26 that practices at the facility prevent or reduce pollutants in storm water and authorized  
27 non-storm water discharges are evaluated and revised to meet changing conditions at the  
28



1 facility, including revision of the SWPPP. *Id.*

2 81. The objectives of the M&RP are to ensure that BMPs have been adequately  
3 developed and implemented, revised if necessary, and to ensure that storm water and  
4 non-storm water discharges are in compliance with the Storm Water Permit's Discharge  
5 Prohibitions, Effluent Limitations, and Receiving Water Limitations. 1997 Permit,  
6 Sections B(2)(a) and B(2)(b); 2015 Permit, Sections X(I) and XI.

7 82. The 2015 Permit requires facility operators to monitor and sample storm  
8 water discharges to ensure that the facility is complying with the terms of the Storm  
9 Water Permit. 2015 Permit, Sections I(J) (Findings 55-56) and XI.

10 83. Section B(2)(d) of the 1997 Permit and Section XI(A)(4) of the 2015 Permit  
11 require that the M&RP shall be revised as necessary to ensure compliance with the Storm  
12 Water Permit.

13 84. Section B(4)(a) of the 1997 Permit and Section XI(A) of the 2015 Permit  
14 require dischargers to conduct monthly visual observations of storm water discharges.

15 85. Section B(4)(c) of the 1997 Permit and Section XI(A)(2) of the 2015 Permit  
16 require dischargers to document the presence of any floating and suspended materials, oil  
17 and grease, discolorations, turbidity, or odor in the discharge, and the source of any  
18 pollutants in storm water discharges from the facility. Dischargers are required to  
19 maintain records of observations, observation dates, discharge locations observed, and  
20 responses taken to reduce or prevent pollutants from contacting storm water discharges.  
21 *See* 1997 Permit, Section B(4)(c); 2015 Permit, Section XI(A)(3).

22 86. The Storm Water Permit also requires dischargers to revise the SWPPP as  
23 necessary to ensure that BMPs are effectively reducing and/or eliminating pollutants at  
24 the facility. 1997 Permit, Section B(4)(c); 2015 Permit, Section X(B)(1).

25 87. The Storm Water Permit requires dischargers to visually observe and collect  
26 samples of storm water discharges from all locations where storm water is discharged.  
27 1997 Permit, Sections B(5) and B(7); 2015 Permit Section XI(B)(4).



1        88. Section B(5)(a) of the 1997 Permit required dischargers to collect storm  
2 water samples during the first hour of discharge from the first storm event of the Wet  
3 Season and at least one (1) other storm event in the Wet Season. All storm water  
4 discharge locations must be sampled. Facility operators that do not collect samples from  
5 the first storm event of the Wet Season are still required to collect samples from two (2)  
6 other storm events of the Wet Season and must explain in the Annual Report why the first  
7 storm event was not sampled.

8        89. Section B(15) of the 1997 Permit required dischargers participating in a  
9 group monitoring plan to collect at least two (2) samples from each discharge point at the  
10 Facility over a five (5) year period. *See* 1997 Permit, Sections B(5), B(7), and B(15).

11        90. Section XI(B)(3) of the 2015 Permit requires dischargers participating in a  
12 compliance group to collect and analyze storm water samples from one (1) QSE within  
13 the first half of each reporting year (July 1 to December 31) and one (1) QSE within the  
14 second half of each reporting year (January 1 to June 30).

15        91. The Facility was and/or is a member of the Building Materials Industry  
16 Group Monitoring Program, and thus the Facility Owner and/or Operator must comply  
17 with the group monitoring provisions set forth in Section B(15) of the 1997 Permit and  
18 Section XI(B)(3) of the 2015 Permit.

19        92. Section B(5)(b) required that sampling conducted pursuant to the  
20 1997 Permit occur during scheduled facility operating hours that are preceded by at least  
21 three (3) working days without storm water discharge.

22        93. Section XI(B)(1) of the 2015 Permit requires sampling if a precipitation  
23 event produces a discharge for at least one (1) drainage area, and it is preceded by forty-  
24 eight (48) hours with no discharge from any drainage area ("QSE").

25        94. Section XI(B)(2) of the 2015 Permit requires dischargers to collect and  
26 analyze storm water samples from two (2) QSEs within the first half of each reporting  
27 year (July 1 to December 31), and two (2) QSEs within the second half of each reporting  
28



1 year (January 1 to June 30).

2 95. Section XI(B)(11) of the 2015 Permit, among other requirements, provides  
3 that permittees must submit all sampling and analytical results for all samples via  
4 SMARTS within thirty (30) days of obtaining all results for each sampling event.

5 96. Section B(5)(c)(i) of the 1997 Permit required dischargers to analyze each  
6 sample for pH, specific conductance ("SC"), TSS, and total organic carbon ("TOC"). A  
7 discharger may substitute analysis for O&G instead of TOC.

8 97. Section B(5)(c)(ii) of the 1997 Permit required dischargers to analyze each  
9 sample for toxic chemicals and other pollutants likely to be present in significant  
10 quantities in the storm water discharged from the facility.

11 98. Section B(5)(c)(iii) and Table D of the 1997 Permit and Table 1 of the 2015  
12 Permit require facilities classified as Standard Industrial Classification ("SIC") code 3273  
13 (Ready-Mix Concrete), such as the Facility, to also analyze storm water samples for iron,  
14 as well as other parameters required by the Regional Board.

15 99. Section XI(B)(6)(a)-(b) of the 2015 Permit requires dischargers to analyze  
16 samples for TSS, O&G, and pH.

17 100. Section XI(B)(6)(c) of the 2015 Permit requires dischargers to analyze  
18 samples for pollutants associated with industrial operations.

19 101. Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze  
20 storm water samples for additional applicable industrial parameters related to receiving  
21 waters with 303(d) listed impairments, or approved Total Maximum Daily Loads.

22 102. Section B(14) of the 1997 Permit required that dischargers submit an Annual  
23 Report to the applicable Regional Board by July 1 of each year. The Annual Report must  
24 include a summary of visual observations and sampling results, an evaluation of the  
25 visual observations and sampling and analysis results, laboratory reports, the annual  
26 comprehensive site compliance evaluation report specified in Section A(9), an  
27 explanation of why a facility did not implement any activities required, and the records  
28



1 specified in Section B(13)(i).

2 103. Section XVI of the 2015 Permit requires dischargers to submit an annual  
3 report with a Compliance Checklist that indicates whether a discharger complies with,  
4 and has addressed all applicable requirements of the 2015 Permit, an explanation for any  
5 non-compliance of requirements within the reporting year, as indicated in the Compliance  
6 Checklist, an identification, including page numbers and/or Sections, of all revisions  
7 made to the SWPPP within the reporting year, and the date(s) of the Annual Evaluation.

8 **IV. FACTUAL BACKGROUND**

9 **A. Facility Site Description.**

10 104. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
11 is an active concrete batch plant.

12 105. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
13 is 6.7 acres.

14 106. Waterkeeper is informed and believes, and thereon alleges, that raw  
15 materials, including aggregate (rock, sand, and gravel), cement, fly ash, and admixtures  
16 are delivered to and stored at the Facility.

17 107. Waterkeeper is informed and believes, and thereon alleges, that raw  
18 materials, including aggregate (rock, sand, and gravel), cement, fly ash, and admixtures  
19 are mixed with water to create concrete at the Facility.

20 108. Waterkeeper is informed and believes, and thereon alleges, that raw  
21 materials, including aggregate (rock, sand, and gravel), cement, fly ash, water, and (if  
22 applicable) admixtures are added to concrete haul trucks at the Facility that mix the  
23 ingredients together to produce concrete that haul the concrete off site.

24 109. Waterkeeper is informed and believes, and thereon alleges, that the concrete  
25 production process at the Facility also includes onsite vehicle and mobile equipment  
26 operating, parking, fueling, and maintenance.

27 110. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
28



1 includes a batch plant.

2 111. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
3 includes a fuel storage area.

4 112. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
5 handles hazardous material throughout the site because vehicles and mobile equipment  
6 can be located throughout the site and that significant quantities of hazardous materials  
7 are stored and used in the Fuel Storage Area and the Admixture Storage Area.

8 113. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
9 includes outdoor storage areas.

10 114. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
11 includes cement silos.

12 115. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
13 includes fly ash silos.

14 116. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
15 includes admixture storage areas.

16 117. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
17 includes a truck washing area.

18 118. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
19 includes material unloading and loading areas.

20 119. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
21 includes a permitted underground storage tank.

22 **B. The Facility's Storm Water Permit Coverage.**

23 120. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
24 Owner and/or Operator obtained Storm Water Permit coverage on March 30, 1992, by  
25 submitting a Notice of Intent to the State Board ("1992 NOI").

26 121. Waterkeeper is informed and believes, and thereon alleges, that in the  
27 1992 NOI the Facility Owner and/or Operator identified the owner/operator of the  
28



1 Facility as "Robertsons Ready Mix" and the Facility name and location as "27026  
2 Watson Road, Perris, CA 92380."

3 122. The 1992 NOI lists the Facility as 7 acres in size.

4 123. The 1992 NOI lists the Facility as 2% impervious.

5 124. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
6 Owner and/or Operator obtained Storm Water Permit coverage on June 16, 1997, by  
7 submitting a Notice of Intent to the State Board ("1997 NOI").

8 125. Waterkeeper is informed and believes, and thereon alleges, that in the  
9 1997 NOI the Facility Owner and/or Operator identified the owner/operator of the  
10 Facility as "Robertsons Ready Mix" and the Facility name and location as "Perris Batch  
11 Plant, 27050 Watson Road, Perris, CA 92381."

12 126. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
13 Owner and/or Operator submitted an NOI on September 29, 2015, to continue its Storm  
14 Water Permit coverage for the Facility under the 2015 Permit.

15 127. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
16 Owner and/or Operator identified the owner/operator of the Facility as "Robertsons  
17 Ready Mix" and the Facility name and location as "Robertsons Ready Mix Perris, 27050  
18 Watson Road, Sun City, CA, 92585."

19 128. The 2015 NOI lists the Facility as 6.7 acres.

20 129. The 2015 NOI lists the industrial area exposed to storm water as 57100 Sq.  
21 Feet.

22 130. The 2015 NOI does not list the percentage of imperviousness.

23 131. The State Board's electronic database, called the Storm Water Multiple  
24 Application & Report Tracking System ("SMARTS"), lists the current Facility Waste  
25 Discharge Identification ("WDID") number as 8 33I005069.

26 132. SMARTS lists the Facility's coverage under the Storm Water Permit as  
27 "Active."  
28



1 133. The 1997 NOI and the 2015 NOI list a SIC code for the Facility as 3273  
2 (Ready-Mixed Concrete).

3 134. Section 6.1 of the Facility SWPPP identifies mobile equipment operation,  
4 fueling, and maintenance, and vehicle and equipment parking, as industrial processes that  
5 are conducted at the Facility.

6 135. Waterkeeper is informed and believes, and thereon alleges, that SIC code  
7 4214 (local trucking with storage) applies to the Facility.

8 136. A facility classified as SIC code 3273 requires Storm Water Permit coverage  
9 for the entire facility. 1997 Permit, Attachment 1, Section 4; *see also* 2015 Permit,  
10 Attachment A, ¶ 2.

11 137. Waterkeeper is informed and believes, and thereon alleges, that the entire  
12 Facility requires Storm Water Permit coverage because the industrial activities at the  
13 Facility are classified as SIC code 3273.

14 138. The 2014/2015 Building Material Industry Group Monitoring Plan lists the  
15 Facility as 6.7 acres.

16 139. The 2014/2015 Building Material Industry Group Monitoring Plan lists the  
17 Facility as 2% impervious.

18 140. The Facility SWPPP states the Facility is 50% pervious. *See* SWPPP, at 5.

19 141. The Facility SWPPP states the Facility is comprised of one (1) Drainage  
20 Area, "DA1." *See* SWPPP, at 5.

21 142. Waterkeeper is informed and believes, and thereon alleges, that the  
22 2015 NOI erroneously failed to list the percentage of imperviousness at the Facility.

23 143. Waterkeeper is informed and believes, and thereon alleges, that to the extent  
24 the Facility Owners and/or Operators have or intend to limit the Storm Water Permit  
25 coverage at the Facility based on the asserted acreage "exposed to storm water,"  
26 Waterkeeper puts the Facility Owners and/or Operators on notice that they have not  
27 complied, and cannot comply, with Section XVII.E.1. of the Storm Water Permit and the  
28



1 required “no exposure” certification. Further, to the extent the Facility Owners and/or  
2 Operators failed to obtain Permit coverage for all areas of industrial activity at the  
3 Facility, storm water discharges associated with industrial activities from unpermitted  
4 portions of the Facility violate section 301(a) of the Clean Water Act.

5 **C. Defendant’s SWPPP and M&RP for the Facility.**

6 144. The Facility SWPPP and M&RP publicly available via the SMARTS  
7 database is dated October 2, 2015.

8 145. Waterkeeper is informed and believes, and thereon alleges, that the SWPPP  
9 and M&RP dated October 2, 2015, is the current SWPPP and M&RP for the Facility  
10 (“Facility SWPPP”).

11 **D. Industrial Activities, Pollutant Sources, Pollutants, and BMPs at the**  
12 **Facility.**

13 146. Waterkeeper is informed and believes, and thereon alleges, that the  
14 Facility’s industrial activities and areas of industrial activity are pollutant sources.

15 147. Waterkeeper is informed and believes, and thereon alleges, that the  
16 Facility’s industrial activities and areas include, but are not limited to: receiving raw  
17 materials (aggregate, cement, fly ash, admixtures) from off site; concrete production in  
18 the batch plant, loading finished product into ready mix trucks for delivery to customers;  
19 concrete mixing; transport of raw materials; unloading of raw materials; outdoor storage  
20 of raw materials, including sand, gravel, rock, chemical admixtures, fly ash, cement, and  
21 recycled concrete; fueling, repairing, cleaning, and maintaining vehicles and equipment;  
22 storage of fuels and hazardous materials, such as diesel fuel, lubricating fluids, new  
23 vehicle fluids, and hazardous waste vehicle fluids; washing concrete mixer trucks; and  
24 vehicle and equipment parking, fueling, and maintenance.

25 148. Section 4 of the Facility SWPPP references Appendix A, Figure 1 (site  
26 location map), and Figure 2 (site plan). However, the Facility SWPPP does not include  
27 Appendix A, Figure 1, and Figure 2.



1 149. Section 5 and Table 1 of the Facility SWPPP provide brief descriptions of  
2 the areas where industrial activities are conducted at the Facility.

3 150. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
4 SWPPP does not include all areas of industrial activity at the Facility.

5 151. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
6 SWPPP does not adequately describe all industrial processes at the Facility.

7 152. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
8 SWPPP does not adequately describe all dust and particulate generating activities.

9 153. Waterkeeper is informed and believes, and thereon alleges, that a site map  
10 dated February 20, 2015 ("February 20 map"), was uploaded to SMARTS on March 24,  
11 2015, and that the February 20 map is a map of the Facility submitted pursuant to  
12 Section II(B)(3)(a) of the 2015 Permit.

13 154. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 SWPPP does not include a separate copy of the February 20 map or any other site map of  
15 the Facility.

16 155. Waterkeeper is informed and believes, and thereon alleges, that the February  
17 20 map does not identify all areas of industrial activity at the Facility.

18 156. The 2014/2015 Building Material Industry Group Monitoring Plan lists the  
19 Facility as having two (2) discharge locations.

20 157. Information available to Waterkeeper indicates that storm water discharges  
21 from the Facility driveway onto Watson Road and from the unpaved area west of the  
22 Facility driveway.

23 158. The 2012/2013 and 2013/2014 Annual Reports include a "Discharge  
24 Location Description" as "Entrance." And the 2014/2015 Annual Report describes a  
25 discharge location at the Facility as "South Ent."

26 159. Waterkeeper is informed and believes, and thereon alleges, that the February  
27 20 map does not correctly list the discharge locations at the Facility.



1 160. Waterkeeper is informed and believes, and thereon alleges, that the February  
2 20 map does not include locations and descriptions of structural control measures that  
3 affect industrial storm water discharges.

4 161. Waterkeeper is informed and believes, and thereon alleges, that the February  
5 20 map does not identify locations where materials are directly exposed to precipitation.

6 162. Section 6.7 of the Facility SWPPP states that the "Facility is located in a  
7 relatively level area. There is limited potential for run on from neighboring operations."

8 163. Waterkeeper is informed and believes, and thereon alleges, that the February  
9 20 map does not include notes, legends, and other data appropriate to ensure the site map  
10 is clear, legible, and understandable.

11 164. Waterkeeper is informed and believes, and thereon alleges, that industrial  
12 activities occur throughout the Facility outdoors without adequate cover to prevent storm  
13 water exposure to pollutant sources.

14 165. Waterkeeper is informed and believes, and thereon alleges, that industrial  
15 activities occur throughout the Facility outdoors without secondary containment or other  
16 adequate treatment measures to prevent polluted storm water from discharging from the  
17 Facility.

18 166. Waterkeeper is informed and believes, and thereon alleges, that because the  
19 Facility SWPPP fails to describe all of the Facility's industrial activities, the Facility  
20 SWPPP also fails to describe all of the significant materials and processes that are related  
21 to the Facility's industrial activities.

22 167. Waterkeeper is informed and believes, and thereon alleges, that because all  
23 significant materials have not been identified, the Facility SWPPP fails to describe the  
24 locations where the materials are stored, received, shipped, and handled, or the typical  
25 quantities and frequency of significant materials at the Facility.

26 168. Section 5.0, Table 1, and Section 6.8 of the SWPPP identify potential  
27 pollutants associated with the Facility's industrial activities.



1 169. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
2 SWPPP fails to describe all of the pollutants associated with the Facility's industrial  
3 activities.

4 170. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
5 Owner and/or Operator has failed and continues to fail to adequately assess pollutants  
6 associated with potential pollutant sources at the Facility.

7 171. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
8 SWPPP does not include an adequate assessment of pollutants associated with potential  
9 pollutant sources at the Facility.

10 172. Waterkeeper is informed and believes, and thereon alleges, that pollutants  
11 associated with the Facility include, but are not limited to: pH-affecting substances;  
12 metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium,  
13 copper, and arsenic; COD; BOD; TSS; benzene; gasoline and diesel fuels; fuel additives;  
14 coolants; trash; and O&G.

15 173. Section 6.8 and Table 3 of the Facility SWPPP identify the BMPs for the  
16 areas of industrial activity at the Facility.

17 174. Section 8.0, Table 5, and Table 6 of the Facility SWPPP lists the BMPs at  
18 the Facility.

19 175. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
20 SWPPP fails to describe adequate BMPs to reduce or prevent pollutants in the Facility's  
21 discharges.

22 176. Waterkeeper is informed and believes, and thereon alleges, that without  
23 properly identifying all industrial activities at the Facility in the SWPPP, the Facility  
24 Owner and/or Operator cannot and has not developed all appropriate BMPs.

25 177. Waterkeeper is informed and believes, and thereon alleges, that without  
26 properly identifying all industrial activities at the Facility in the SWPPP, the Facility  
27 Owner and/or Operator cannot and has not implemented all appropriate BMPs.



1 178. Waterkeeper is informed and believes, and thereon alleges, that without  
2 properly identifying all significant materials at the Facility in the SWPPP, the Facility  
3 Owner and/or Operator cannot and has not developed all appropriate BMPs.

4 179. Waterkeeper is informed and believes, and thereon alleges, that without  
5 properly identifying all significant materials at the Facility in the SWPPP, the Facility  
6 Owner and/or Operator cannot and has not implemented all appropriate BMPs.

7 180. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
8 SWPPP does not include an adequate assessment of potential pollutant sources at the  
9 Facility.

10 181. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
11 Owner and/or Operator has failed and continues to fail to assess the Facility's BMPs  
12 corresponding to potential pollutant sources and associated pollutants.

13 182. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 SWPPP does not include an adequate assessment of the Facility's BMPs corresponding to  
15 potential pollutant sources and associated pollutants.

16 183. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
17 Owner and/or Operator has failed and continues to fail to assess potential pollutant  
18 sources at the Facility.

19 184. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
20 SWPPP does not include an adequate description of the Facility BMPs.

21 185. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
22 Owner and/or Operator has failed and continues to fail to analyze the effectiveness of the  
23 BMPs at the Facility.

24 186. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
25 SWPPP does not include an adequate analysis of the effectiveness of the BMPs at the  
26 Facility.

27 187. Waterkeeper is informed and believes, and thereon alleges, that storm water  
28



1 sampling at the Facility demonstrates that the Facility's storm water discharges contain  
2 concentrations of pollutants above the EPA Benchmarks, including, but not limited to:  
3 pH, TSS, and iron.

4 188. Waterkeeper is informed and believes, and thereon alleges, that the  
5 significant exceedances of EPA Benchmarks demonstrate that the Facility Owner and/or  
6 Operator failed and continues to fail to develop BMPs to prevent the exposure of  
7 pollutants to storm water, and to prevent discharges of polluted storm water from the  
8 Facility.

9 189. Waterkeeper is informed and believes, and thereon alleges, that the  
10 significant exceedances of EPA Benchmarks demonstrate that the Facility Owner and/or  
11 Operator failed and continues to fail to implement BMPs to prevent the exposure of  
12 pollutants to storm water, and to prevent discharges of polluted storm water from the  
13 Facility.

14 190. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
15 Owner and/or Operator has failed and continues to fail to adequately revise the SWPPP.

16 191. Waterkeeper is informed and believes, and thereon alleges, that the normal  
17 operating hours of the Facility are Monday through Saturday, 5:00 am to 6:00 pm.

18 **E. Discharge Locations at the Facility.**

19 192. In the Facility SWPPP, the Facility Owner and/or Operator identifies one (1)  
20 discharge point located at the Facility labeled as "Outfall 1 (OF1)." *See* SWPPP, at 5.

21 193. Section 4.1 of the Facility SWPPP indicates that Drainage Area 1 comprises  
22 the entire Facility.

23 194. Section 4.1 of the Facility SWPPP states that storm water that "[s]torm water  
24 flows to the sump basin at the central portion of the site. Overflow from the sump drains  
25 into the v-ditch that runs along the perimeter of the property. The inlet of the ditch is at  
26 the southern portion of the site, and runoff flows north along the western property line,  
27 and then west along the north property line. The v-ditch ends at the northwest corner of  
28



1 the property, with its outlet being Outfall 1 (OF1).”

2 195. Section 1.0 of the Facility SWPPP also states that, “[o]verflow from the  
3 wash out basins flow to a sump. The sump near the center of the plant area will collect  
4 runoff from the operations which is pumped back to the plant and reused” and that  
5 “[o]verflow from the sump basin is channeled into concrete swales and directed into a  
6 paved v-ditch, which discharges waters into the San Jacinto River.”

7 196. Waterkeeper is informed and believes, and thereon alleges, that storm water  
8 is also collected in a sump at the Facility such that non-storm water and storm water is  
9 commingled.

10 197. The Facility site map available on the SMARTS database shows Outfall 1 as  
11 located at the back of the Facility near the AT & SF R/R.

12 198. Waterkeeper is informed and believes, and thereon alleges, that Outfall 1 is a  
13 storm water discharge point at the Facility.

14 199. The 2014/2015 Building Materials Industry Group Monitoring Plan for the  
15 Facility reports that there are two (2) storm water discharge locations at the Facility.

16 200. Waterkeeper is informed and believes, and thereon alleges, that there are at  
17 least two (2) additional discharge locations at the Facility for a total of three (3).

18 201. Waterkeeper is informed and believes, and thereon alleges, that there is a  
19 discharge location is located at the start of the v-ditch near the driveway onto Watson  
20 Road.

21 202. Waterkeeper is informed and believes, and thereon alleges, that another  
22 discharge location is located at the driveway onto Watson Road.

23 203. Waterkeeper is informed and believes, and thereon alleges, that the  
24 pollutants associated with the Facility have been and continue to be tracked throughout  
25 the Facility.

26 204. Waterkeeper is informed and believes, and thereon alleges, that trucks and  
27 vehicles track sediment, dirt, oil and grease, metal particles, and other pollutants off-site  
28



1 via the driveway from the Facility.

2 205. Waterkeeper is informed and believes, and thereon alleges, that at least three  
3 (3) storm water discharge points exist at the Facility.

4 206. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
5 SWPPP provides no sizing information for the retention capacity of the sump basin(s) at  
6 the Facility.

7 207. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
8 Owner and/or Operator collected a storm water sample at Outfall 1 at the Facility on  
9 January 5, 2016, and that on that same date a nearby rain gage located at March Air  
10 Reserve Base in Riverside, CA (Station ID KRIV) recorded 0.78 inches of rain.

11 **F. The Facility's Discharges to the Receiving Waters.**

12 208. Waterkeeper is informed and believes, and thereon alleges, that the  
13 discharge point at the Facility lead to the municipal storm drain system which then  
14 discharges to the San Jacinto River.

15 209. Waterkeeper is informed and believes, and thereon alleges, that the polluted  
16 storm water then discharges from the San Jacinto River to Canyon Lake, Lake Elsinore,  
17 Temescal Creek Reach 6, Reach 5, Reach 4, Reach 3, Reach 2, Reach 1B, Reach 1A,  
18 Santa Ana River Reach 3, Reach 2, Reach 1, Tidal Prism of Santa Ana River, and finally  
19 into the Pacific Ocean ("Receiving Waters").

20 210. Waterkeeper is informed and believes, and thereon alleges, that each of the  
21 Receiving Waters is a water of the United States.

22 211. Waterkeeper is informed and believes, and thereon alleges, that polluted  
23 storm water and non-storm water discharges from the Facility to the Receiving Waters.

24 **G. Defendant's Sampling, Monitoring, and Reporting.**

25 212. Via a Public Records Act request to the Regional Board, Waterkeeper  
26 obtained an Annual Report for the Facility dated June 1, 2011.

27 213. Waterkeeper is informed and believes, and thereon alleges, that the Annual  
28



1 Report dated June 1, 2011, obtained from the Regional Board is the 2010/2011 Annual  
2 Report for the Facility.

3 214. Via a Public Records Act request to the Regional Board, Waterkeeper  
4 obtained an Annual Report for the Facility dated May 28, 2012.

5 215. Waterkeeper is informed and believes, and thereon alleges, that the Annual  
6 Report dated May 28, 2012, obtained from the Regional Board is the 2011/2012 Annual  
7 Report for the Facility.

8 216. Via a Public Records Act request to the Regional Board, Waterkeeper  
9 obtained an Annual Report for the Facility dated May 27, 2013.

10 217. Waterkeeper is informed and believes, and thereon alleges, that the Annual  
11 Report dated May 27, 2013, obtained from the Regional Board is the 2012/2013 Annual  
12 Report for the Facility.

13 218. Via a Public Records Act request to the Regional Board, Waterkeeper  
14 obtained an Annual Report for the Facility dated May 29, 2014.

15 219. Waterkeeper is informed and believes, and thereon alleges, that the Annual  
16 Report dated May 29, 2014, obtained from the Regional Board is the 2013/2014 Annual  
17 Report for the Facility.

18 220. Via the SMARTS database, Waterkeeper obtained an Annual Report for the  
19 Facility, dated May 15, 2015.

20 221. Waterkeeper is informed and believes, and thereon alleges, that the Annual  
21 Report dated May 15, 2015, obtained from the SMARTS database is the 2014/2015  
22 Annual Report for the Facility.

23 222. Waterkeeper refers to the above-described 2010/2011 Annual Report,  
24 2011/2012 Annual Report, 2012/2013 Annual Report, 2013/2014 Annual Report, and  
25 2014/2015 Annual Report collectively as Defendant's "Annual Reports."

26 223. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
27 Owner and/or Operator failed to develop an adequate M&RP.



1        224. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
2 Owner and/or Operator failed to report any storm water sampling during the reporting  
3 years covered by these Annual Reports.

4        225. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
5 Owner and/or Operator failed to analyze the Facility's January 5, 2016, storm event  
6 sample for all required contaminants, including copper, lead, and aluminum, in violation  
7 of Section XI(B)(6) of the 2015 Permit.

8        226. The Facility SWPPP states the storm water that is discharged from the site  
9 flows into the San Jacinto River, which is a main tributary of Canyon Lake. The Facility  
10 SWPPP also states the water that exits the dam of Canyon Lake ultimately flows into  
11 Lake Elsinore. *See* SWPPP, at 33.

12        227. The Facility SWPPP states that in cases of high water, Lake Elsinore  
13 discharges into Reach 6 of Temescal Creek. *See* SWPPP, at 34.

14        228. The Facility SWPPP and 2012 303(d) List identifies Canyon Lake as  
15 impaired for pollutants including pathogens and nutrients. *See* SWPPP, at 33.

16        229. The Facility SWPPP states that neither nutrients nor pathogens are  
17 substances generated by the Facility, thus, storm water discharges will not be analyzed  
18 for those parameters. *See* SWPPP, at 33.

19        230. The Facility SWPPP and 2012 303(d) List identifies Lake Elsinore as  
20 impaired for pollutants including nutrients, organic enrichment/low dissolved oxygen,  
21 PCBs, Sediment Toxicity, and Unknown Toxicity. *See* SWPPP, at 34.

22        231. The Facility SWPPP states that nutrients, organic enrichment, PCBs, and  
23 toxicity are not byproducts of the Facility; that storm water discharge samples are already  
24 undergoing analyses for TSS; and that additional analysis of storm water samples are not  
25 required. *See* SWPPP, at 34.

26        232. The Facility SWPPP and 2012 303(d) List identifies Reach 6 of Temescal  
27 Creek as impaired for indicator bacteria. *See* SWPPP, at 34.



1        233. The Facility SWPPP states that bacteria is not generated by the Facility and  
2 that storm water discharge samples will not be analyzed for this parameter.

3        234. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
4 SWPPP fails to include all the Facility's receiving waters.

5        235. The 2012 303(d) List identifies Temescal Creek Reach 1 as impaired for pH;  
6 Santa Ana River Reach 3 as impaired for copper, lead, and pathogens; and Santa Ana  
7 River Reach 2 as impaired for indicator bacteria.

8        236. The EPA's *Industrial Stormwater Fact Sheet Series, Sector E* states  
9 "Concrete Product Manufacturing" facilities and "All Facilities" in Sector E include  
10 associated pollutants of lead, iron, zinc, and aluminum.

11        237. Waterkeeper is informed and believes, and thereon alleges, that contributing  
12 pollutants to these impaired waters include pH, copper, and lead.

13        238. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 has failed to identify industrial pollutants related to the Receiving Waters with Section  
15 303(d) listed impairments that may be causing or contributing to an exceedance of a  
16 WQS, as required by Section X(G)(2)(a)(ix) of the 2015 Permit.

17        239. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
18 has failed to analyze storm water samples for pollutants related to the Receiving Waters  
19 with 303(d) listed impairments that may be causing or contributing to an exceedance of a  
20 WQS, as required by Section XI(B)(6)(e) of the 2015 Permit.

21        2010/2011 Annual Report

22        240. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
23 Owner and/or Operator failed to identify the correct number of discharge locations at the  
24 Facility in the 2010/2011 Annual Report.

25        241. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
26 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
27 observations of unauthorized non-storm water discharges for each of its drainage areas in  
28



1 the 2010/2011 Annual Report.

2 242. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
3 Owner and/or Operator failed to indicate the location of non-storm water visual  
4 observations to document which discharge areas were observed in the 2010/2011 Annual  
5 Report.

6 243. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
7 Owner and/or Operator failed to include the required summary of its monthly visual  
8 observations of storm water discharges for each of its discharge points in the 2010/2011  
9 Annual Report.

10 244. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
11 Owner and/or Operator failed to include the required evaluation of its monthly visual  
12 observations of storm water discharges for each of its discharge points in the 2010/2011  
13 Annual Report.

14 245. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
15 Owner and/or Operator failed to include the required summary of the presence of any  
16 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
17 pollutants at the unobserved discharge points in the 2010/2011 Annual Report.

18 246. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
19 Owner and/or Operator failed to include the required evaluation of the presence of any  
20 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
21 pollutants at the unobserved discharge points in the 2010/2011 Annual Report.

22 247. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
23 Owner and/or Operator failed to include the required summary of its quarterly visual  
24 observations of unauthorized non-storm water discharges for each of its drainage areas in  
25 the 2010/2011 Annual Report.

26 248. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
27 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
28



1 observations of unauthorized non-storm water discharges for each of its drainage areas in  
2 the 2010/2011 Annual Report.

3 249. In the 2010/2011 Annual Report, the Facility Owner and/or Operator reports  
4 that it was exempt from collecting and analyzing samples from two (2) storm events  
5 because the Facility was participating in an approved group monitoring plan, i.e., the  
6 Building Materials Industry Group Monitoring Plan.

7 250. In the 2010/2011 Annual Report, the Facility Owner and/or Operator reports  
8 that it was scheduled to sample one (1) storm event during the 2010/2011 reporting year.

9 251. In the 2010/2011 Annual Report, the Facility Owner and/or Operator reports  
10 that it sampled zero (0) storm events in the 2010/2011 reporting year because “[n]o  
11 qualifying storm event during operational hours.”

12 252. Waterkeeper is informed and believes, and thereon alleges, that during the  
13 2010/2011 Wet Season, the Facility Owner and/or Operator failed to collect any storm  
14 water samples.

15 253. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
16 Owner and/or Operator certified that the Facility was in compliance with the Storm  
17 Water Permit in its 2010/2011 Annual Report.

18 254. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
19 Owner’s and/or Operator’s certification of compliance in the 2010/2011 Annual Report  
20 was false because it failed to comply with Section B(14) of the 1997 Permit.

21 255. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
22 Owner’s and/or Operator’s certification of compliance in the 2010/2011 Annual Report  
23 was false because the Facility Owner and/or Operator had not revised the Facility  
24 SWPPP to achieve compliance with the Storm Water Permit.

25 256. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
26 Owner’s and/or Operator’s certification of compliance in the 2010/2011 Annual Report  
27 was false because the Facility Owner and/or Operator had not revised the Facility M&RP  
28



1 to achieve compliance with the Storm Water Permit.

2 257. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
3 Owner and/or Operator failed to describe instances of the Facility's noncompliance with  
4 the Storm Water Permit in its 2010/2011 Annual Report.

5 258. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
6 Owner and/or Operator failed to include descriptions of steps taken to prevent recurrence  
7 of its noncompliance with the Storm Water Permit in its 2010/2011 Annual Report.

8 2011/2012 Annual Report

9 259. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
10 Owner and/or Operator failed to identify the correct number of discharge locations at the  
11 Facility in the 2011/2012 Annual Report.

12 260. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
13 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
14 observations of unauthorized non-storm water discharges for each of its drainage areas in  
15 the 2011/2012 Annual Report.

16 261. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
17 Owner and/or Operator failed to indicate the location of non-storm water visual  
18 observations to document which discharge areas were observed in the 2011/2012 Annual  
19 Report.

20 262. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
21 Owner and/or Operator failed to include the required summary of its monthly visual  
22 observations of storm water discharges for each of its discharge points in the 2011/2012  
23 Annual Report.

24 263. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
25 Owner and/or Operator failed to include the required evaluation of its monthly visual  
26 observations of storm water discharges for each of its discharge points in the 2011/2012  
27 Annual Report.



1        264. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
2 Owner and/or Operator failed to include the required summary of the presence of any  
3 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
4 pollutants at the unobserved discharge points in the 2011/2012 Annual Report.

5        265. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
6 Owner and/or Operator failed to include the required evaluation of the presence of any  
7 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
8 pollutants at the unobserved discharge points in the 2011/2012 Annual Report.

9        266. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
10 Owner and/or Operator failed to include the required summary of its quarterly visual  
11 observations of unauthorized non-storm water discharges for each of its drainage areas in  
12 the 2011/2012 Annual Report.

13        267. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
15 observations of unauthorized non-storm water discharges for each of its drainage areas in  
16 the 2011/2012 Annual Report.

17        268. In the 2011/2012 Annual Report, the Facility Owner and/or Operator reports  
18 that it was exempt from collecting and analyzing samples from two (2) storm events  
19 because the Facility was participating in an approved group monitoring plan, i.e., the  
20 Building Materials Industry Group Monitoring Plan.

21        269. In the 2011/2012 Annual Report, the Facility Owner and/or Operator reports  
22 that it was scheduled to sample one (1) storm event during the 2011/2012 reporting year.

23        270. Waterkeeper is informed and believes, and thereon alleges, that the Building  
24 Materials Industry Group Monitoring Plan required the Facility Owner and/or Operator to  
25 collect and analyze at least one (1) storm water sample during the 2011/2012 wet season.

26        271. In the 2011/2012 Annual Report, the Facility Owner and/or Operator reports  
27 that it sampled zero (0) storm events in the 2011/2012 reporting year because "[n]o  
28



1 qualifying storm event during operational hours.”

2 272. Waterkeeper is informed and believes, and thereon alleges, that at least one  
3 (1) qualifying rain event occurred in the 2011/2012 Wet Season.

4 273. Waterkeeper is informed and believes, and thereon alleges, that during the  
5 2011/2012 Wet Season the Facility Owner and/or Operator failed to collect any storm  
6 water samples.

7 274. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
8 Owner and/or Operator failed to analyze all storm water samples collected for all  
9 required parameters, including pollutants likely to be present in the Facility storm water  
10 discharges in significant quantities, such as iron, aluminum, copper, and zinc, during the  
11 2011/2012 Wet Season.

12 275. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
13 Owner and/or Operator certified that the Facility was in compliance with the Storm  
14 Water Permit in its 2011/2012 Annual Report.

15 276. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
16 Owner's and/or Operator's certification of compliance in the 2011/2012 Annual Report  
17 was false because it failed to comply with Section B(14) of the 1997 Permit.

18 277. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
19 Owner's and/or Operator's certification of compliance in the 2011/2012 Annual Report  
20 was false because it reports that there were zero (0) storm events that produced a  
21 discharge during operating hours yet at least ten (10) storm events occurred during the  
22 Facility's normal operating days listed in its SWPPP.

23 278. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
24 Owner's and/or Operator's certification of compliance in the 2011/2012 Annual Report  
25 was false because the Facility Owner and/or Operator had not revised the Facility  
26 SWPPP to achieve compliance with the Storm Water Permit.

27 279. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
28



1 Owner's and/or Operator's certification of compliance in the 2011/2012 Annual Report  
2 was false because the Facility Owner and/or Operator had not revised the Facility M&RP  
3 to achieve compliance with the Storm Water Permit.

4 280. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
5 Owner and/or Operator failed to describe instances of the Facility's noncompliance with  
6 the Storm Water Permit in its 2011/2012 Annual Report.

7 281. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
8 Owner and/or Operator failed to include descriptions of steps taken to prevent recurrence  
9 of its noncompliance with the Storm Water Permit in its 2011/2012 Annual Report.

10 2012/2013 Annual Report

11 282. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
12 Owner and/or Operator failed to identify the correct number of discharge locations at the  
13 Facility in the 2011/2012 Annual Report.

14 283. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
15 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
16 observations of unauthorized non-storm water discharges for each of its drainage areas in  
17 the 2012/2013 Annual Report.

18 284. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
19 Owner and/or Operator failed to indicate the location of non-storm water visual  
20 observations to document which discharge areas were observed in the 2012/2013 Annual  
21 Report.

22 285. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
23 Owner and/or Operator failed to include the required summary of its monthly visual  
24 observations of storm water discharges for each of its discharge points in the 2012/2013  
25 Annual Report.

26 286. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
27 Owner and/or Operator failed to include the required evaluation of its monthly visual  
28



1 observations of storm water discharges for each of its discharge points in the 2012/2013  
2 Annual Report.

3 287. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
4 Owner and/or Operator failed to include the required summary of the presence of any  
5 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
6 pollutants at the unobserved discharge points in the 2012/2013 Annual Report.

7 288. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
8 Owner and/or Operator failed to include the required evaluation of the presence of any  
9 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
10 pollutants at the unobserved discharge points in the 2012/2013 Annual Report.

11 289. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
12 Owner and/or Operator failed to include the required summary of its quarterly visual  
13 observations of unauthorized non-storm water discharges for each of its drainage areas in  
14 the 2012/2013 Annual Report.

15 290. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
16 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
17 observations of unauthorized non-storm water discharges for each of its drainage areas in  
18 the 2012/2013 Annual Report.

19 291. In the 2012/2013 Annual Report, the Facility Owner and/or Operator reports  
20 that it was exempt from collecting and analyzing samples from two (2) storm events  
21 because the Facility was participating in an approved group monitoring plan, i.e., the  
22 Building Materials Industry Group Monitoring Plan.

23 292. In the 2012/2013 Annual Report, the Facility Owner and/or Operator reports  
24 that it was scheduled to sample one (1) storm event during the 2012/2013 reporting year.

25 293. In the 2012/2013 Annual Report, the Facility Owner and/or Operator reports  
26 that it sampled zero (0) storm events in the 2012/2013 reporting year because  
27 "Robertson's Ready Mix is a construction based business and during inclement weather  
28



1 our facility is closed.”

2 294. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
3 does operate during storm events.

4 295. Waterkeeper is informed and believes, and thereon alleges, that at least one  
5 (1) qualifying rain event occurred in the 2012/2013 Wet Season.

6 296. Waterkeeper is informed and believes, and thereon alleges, that during the  
7 2012/2013 Wet Season the Facility Owner and/or Operator failed to collect any storm  
8 water samples.

9 297. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
10 Owner and/or Operator failed to analyze all storm water samples collected for all  
11 required parameters, including pollutants likely to be present in the Facility storm water  
12 discharges in significant quantities, such as iron, aluminum, copper, and zinc, during the  
13 2012/2013 Wet Season.

14 298. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
15 Owner and/or Operator certified that the Facility was in compliance with the Storm  
16 Water Permit in its 2012/2013 Annual Report.

17 299. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
18 Owner’s and/or Operator’s certification of compliance in the 2012/2013 Annual Report  
19 was false because it failed to comply with Section B of the 1997 Permit.

20 300. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
21 Owner’s and/or Operator’s certification of compliance in the 2012/2013 Annual Report  
22 was false because it reports that the Facility does not operate during “inclement weather”  
23 though the Facility SWPPP states that the Facility operating hours are Monday through  
24 Saturday, 5:00 am to 6:00 pm without qualification.

25 301. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
26 Owner’s and/or Operator’s certification of compliance in the 2012/2013 Annual Report  
27 was false because the Facility Owner and/or Operator had not revised the Facility  
28



1 SWPPP to achieve compliance with the Storm Water Permit.

2 302. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
3 Owner's and/or Operator's certification of compliance in the 2012/2013 Annual Report  
4 was false because the Facility Owner and/or Operator had not revised the Facility M&RP  
5 to achieve compliance with the Storm Water Permit.

6 303. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
7 Owner and/or Operator failed to describe instances of the Facility's noncompliance with  
8 the Storm Water Permit in its 2012/2013 Annual Report.

9 304. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
10 Owner and/or Operator failed to include descriptions of steps taken to prevent recurrence  
11 of its noncompliance with the Storm Water Permit in its 2012/2013 Annual Report.

12 2013/2014 Annual Report

13 305. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 Owner and/or Operator failed to report the number of discharge locations at the Facility  
15 in the 2013/2014 Annual Report.

16 306. Waterkeeper is informed and believes, and thereon alleges, that Facility  
17 Owner and/or Operator failed to include the required summary of its quarterly visual  
18 observations of unauthorized non-storm water discharges for each of its drainage areas in  
19 the 2013/2014 Annual Report.

20 307. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
21 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
22 observations of unauthorized non-storm water discharges for each of its drainage areas in  
23 the 2013/2014 Annual Report.

24 308. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
25 Owner and/or Operator failed to indicate the location of non-storm water visual  
26 observations to document which discharge areas were observed in the 2013/2014 Annual  
27 Report.



1        309. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
2 Owner and/or Operator failed to include the required summary of its monthly visual  
3 observations of storm water discharges for each of its discharge points in the 2013/2014  
4 Annual Report.

5        310. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
6 Owner and/or Operator failed to include the required evaluation of its monthly visual  
7 observations of storm water discharges for each of its discharge points in the 2013/2014  
8 Annual Report.

9        311. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
10 Owner and/or Operator failed to include the required summary of the presence of any  
11 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
12 pollutants at the unobserved discharge points in the 2013/2014 Annual Report.

13        312. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 Owner and/or Operator failed to include the required evaluation of the presence of any  
15 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
16 pollutants at the unobserved discharge points in the 2013/2014 Annual Report.

17        313. In the 2013/2014 Annual Report, the Facility Owner and/or Operator reports  
18 that it was exempt from collecting and analyzing samples from two (2) storm events  
19 because the Facility was participating in an approved group monitoring plan, i.e., the  
20 Building Materials Industry Group Monitoring Plan.

21        314. In the 2013/2014 Annual Report, the Facility Owner and/or Operator reports  
22 that it was scheduled to sample one (1) storm event during the 2013/2014 reporting year.

23        315. Waterkeeper is informed and believes, and thereon alleges, that the Building  
24 Materials Industry Group Monitoring Plan required the Facility Owner and/or Operator to  
25 collect and analyze at least one (1) storm water sample during the 2013/2014 wet season.

26        316. In the 2013/2014 Annual Report, the Facility Owner and/or Operator reports  
27 that it sampled zero (0) storm events in the 2013/2014 reporting year because  
28



1 “Robertson’s Ready Mix is a construction based business and during inclement weather  
2 our facility is closed.”

3 317. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
4 does operate during storm events.

5 318. Waterkeeper is informed and believes, and thereon alleges, that at least one  
6 (1) qualifying rain event occurred in the 2013/2014 Wet Season.

7 319. Waterkeeper is informed and believes, and thereon alleges, that during the  
8 2013/2014 Wet Season the Facility Owner and/or Operator failed to collect any storm  
9 water samples.

10 320. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
11 Owner and/or Operator failed to analyze all storm water samples collected for all  
12 required parameters, including pollutants likely to be present in the Facility storm water  
13 discharges in significant quantities, such as iron, aluminum, copper, and zinc, during the  
14 2013/2014 Wet Season.

15 321. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
16 Owner and/or Operator certified that the Facility was in compliance with the Storm  
17 Water Permit in its 2013/2014 Annual Report.

18 322. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
19 Owner’s and/or Operator’s certification of compliance in the 2013/2014 Annual Report  
20 was false because it failed to comply with each of the requires of Section B(14) of the  
21 1997 Permit.

22 323. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
23 Owner’s and/or Operator’s certification of compliance in the 2013/2014 Annual Report  
24 was false because it reports that the Facility does not operate during “inclement weather”  
25 though the Facility SWPPP states that the Facility operating hours are Monday through  
26 Saturday, 5:00 am to 6:00 pm without qualification.

27 324. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
28



1 Owner's and/or Operator's certification of compliance in the 2013/2014 Annual Report  
2 was false because the Facility Owner and/or Operator had not revised the Facility  
3 SWPPP to achieve compliance with the Storm Water Permit.

4 325. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
5 Owner's and/or Operator's certification of compliance in the 2013/2014 Annual Report  
6 was false because the Facility Owner and/or Operator had not revised the Facility M&RP  
7 to achieve compliance with the Storm Water Permit.

8 326. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
9 Owner and/or Operator failed to describe instances of the Facility's noncompliance with  
10 the Storm Water Permit in its 2013/2014 Annual Report.

11 327. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
12 Owner and/or Operator failed to include descriptions of steps taken to prevent recurrence  
13 of its noncompliance with the Storm Water Permit in its 2013/2014 Annual Report.

14 2014/2015 Annual Report

15 328. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
16 Owner and/or Operator failed to identify the correct number of discharge locations at the  
17 Facility in the 2014/2015 Annual Report.

18 329. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
19 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
20 observations of unauthorized non-storm water discharges for each of its drainage areas in  
21 the 2014/2015 Annual Report.

22 330. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
23 Owner and/or Operator failed to indicate the location of non-storm water visual  
24 observations to document which discharge areas were observed in the 2014/2015 Annual  
25 Report.

26 331. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
27 Owner and/or Operator failed to include the required summary of its monthly visual  
28



1 observations of storm water discharges for each of its discharge points in the 2014/2015  
2 Annual Report.

3 332. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
4 Owner and/or Operator failed to include the required evaluation of its monthly visual  
5 observations of storm water discharges for each of its discharge points in the 2014/2015  
6 Annual Report.

7 333. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
8 Owner and/or Operator failed to include the required summary of the presence of any  
9 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
10 pollutants at the unobserved discharge points in the 2014/2015 Annual Report.

11 334. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
12 Owner and/or Operator failed to include the required evaluation of the presence of any  
13 floating and suspended material, O&G, discolorations, turbidity, odor, and source of  
14 pollutants at the unobserved discharge points in the 2014/2015 Annual Report.

15 335. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
16 Owner and/or Operator failed to include the required summary of its quarterly visual  
17 observations of unauthorized non-storm water discharges for each of its drainage areas in  
18 the 2014/2015 Annual Report.

19 336. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
20 Owner and/or Operator failed to include the required evaluation of its quarterly visual  
21 observations of unauthorized non-storm water discharges for each of its drainage areas in  
22 the 2014/2015 Annual Report.

23 337. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
24 Owner and/or Operator certified that the Facility was in compliance with the Storm  
25 Water Permit in its 2014/2015 Annual Report.

26 338. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
27 Owner's and/or Operator's certification of compliance in the 2014/2015 Annual Report  
28



1 was false because it failed to comply with Section B of the 1997 Permit.

2 339. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
3 Owner's and/or Operator's certification of compliance in the 2014/2015 Annual Report  
4 was false because the Facility Owner and/or Operator had not revised the Facility  
5 SWPPP to achieve compliance with the Storm Water Permit.

6 340. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
7 Owner's and/or Operator's certification of compliance in the 2014/2015 Annual Report  
8 was false because the Facility Owner and/or Operator had not revised the Facility M&RP  
9 to achieve compliance with the Storm Water Permit.

10 341. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
11 Owner and/or Operator failed to describe instances of the Facility's noncompliance with  
12 the Storm Water Permit in its 2014/2015 Annual Report.

13 342. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
14 Owner and/or Operator failed to include descriptions of steps taken to prevent recurrence  
15 of its noncompliance with the Storm Water Permit in its 2014/2015 Annual Report.

16 2015/2016 Annual Report

17 343. Waterkeeper is informed and believes, and thereon alleges, that no later than  
18 July 15, 2016, pursuant to Section XVI of the 2015 Permit, the Facility Owner and/or  
19 Operator was required to certify and submit via SMARTS a 2015/2016 Annual Report  
20 using the standardized format and checklists in SMARTS.

21 344. Waterkeeper is informed and believes, and thereon alleges, that the publicly  
22 available portion of the SMARTS database for the Facility does not include a 2015/2016  
23 Annual Report for the Facility for the 2015/2016 reporting year.

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1 **V. CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**

3 **Defendant's Discharges of Contaminated Storm Water in Violation**  
4 **of the Storm Water Permit Effluent Limitations and the Clean**  
5 **Water Act.**

6 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

7 345. Waterkeeper incorporates the allegations contained in the above paragraphs  
8 as though fully set forth herein.

9 346. Waterkeeper is informed and believes, and thereon alleges, that Defendant  
10 failed and continues to fail to reduce or prevent pollutants associated with industrial  
11 activities at the Facility from discharging from the Facility through implementation of  
12 BMPs that achieve BAT/BCT.

13 347. Waterkeeper is informed and believes, and thereon alleges, that discharges  
14 of storm water containing levels of pollutants that do not achieve compliance with  
15 BAT/BCT standards from the Facility occur every time storm water discharges from the  
16 Facility. Defendant's failure to develop and/or implement BMPs that achieve the  
17 pollutant discharge reductions attainable via BAT or BCT at the Facility is a violation of  
18 the Storm Water Permit and the CWA. *See* 1997 Permit, Effluent Limitation B(3); 2015  
19 Permit, Section I(D) (Finding 32), Effluent Limitation V(A); 33 U.S.C. § 1311(b).

20 348. The Facility Owner and/or Operator violates and will continue to violate the  
21 Storm Water Permit Effluent Limitations each and every time storm water containing  
22 levels of pollutants that do not achieve BAT/BCT standards discharges from the Facility.

23 349. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
24 Owner's and/or Operator's violations of Effluent Limitations of the Storm Water Permit  
25 and the Clean Water Act are ongoing and continuous.

26 350. Each and every violation of the Storm Water Permit Effluent Limitations is a  
27 separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

28 351. By committing the acts and omissions alleged above, the Facility Owner



1 and/or Operator is subject to an assessment of civil penalties for each and every violation  
2 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and  
3 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

4 352. An action for injunctive relief is authorized by CWA Section 505(a),  
5 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above  
6 would irreparably harm Waterkeeper, its members, and the citizens of the State of  
7 California, for which harm Waterkeeper has no plain, speedy, or adequate remedy at law.

8 353. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
9 an actual controversy exists as to the rights and other legal relations of the Parties.

10 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
11 hereafter.

12 **SECOND CAUSE OF ACTION**

13 **Defendant's Discharges of Contaminated Storm Water in Violation**  
14 **of Storm Water Permit Receiving Water Limitations and the Clean**  
15 **Water Act.**

16 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

17 354. Waterkeeper incorporates the allegations contained in the above paragraphs  
18 as though fully set forth herein.

19 355. Waterkeeper is informed and believes, and thereon alleges, that discharges  
20 of storm water containing levels of pollutants that adversely impact human health and/or  
21 the environment from the Facility occur each time storm water discharges from the  
22 Facility.

23 356. Waterkeeper is informed and believes, and thereon alleges, that storm water  
24 containing levels of pollutants that cause or contribute to exceedances of water quality  
25 standards has discharged and continues to discharge from the Facility each time storm  
26 water discharges from the Facility.

27 357. The Facility Owner and/or Operator violates and will continue to violate the  
28 Storm Water Permit Receiving Water Limitations each and every time storm water



1 containing levels of pollutants that adversely impact human health and/or the  
2 environment, and that cause or contribute to exceedances of WQS, discharges from the  
3 Facility.

4 358. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
5 Owner's and/or Operator's violations of Receiving Water Limitations of the Storm Water  
6 Permit and the CWA are ongoing and continuous.

7 359. Each and every violation of the Storm Water Permit Receiving Water  
8 Limitations is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C.  
9 § 1311(a).

10 360. By committing the acts and omissions alleged above, the Facility Owner  
11 and/or Operator is subject to an assessment of civil penalties for each and every violation  
12 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and  
13 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

14 361. An action for injunctive relief under the Clean Water Act is authorized by  
15 Section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions  
16 alleged above would irreparably harm Waterkeeper, Waterkeeper's members, and the  
17 citizens of the State of California, for which harm they have no plain, speedy, or adequate  
18 remedy at law.

19 362. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
20 an actual controversy exists as to the rights and other legal relations of the Parties.

21 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
22 hereafter.

23 **THIRD CAUSE OF ACTION**

24 **Defendant's Discharges of Non-Storm Water in Violation of the Storm Water  
Permit and the Clean Water Act.**

25 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

26 363. Waterkeeper incorporates the allegations contained in the above paragraphs  
27 as though fully set forth herein.



1        364. Waterkeeper is informed and believes, and thereon alleges, that prohibited  
2 non-storm water discharges from the Facility occur due to inadequate BMP development  
3 and/or implementation necessary to prevent these discharges, including during concrete  
4 and water truck filling, truck washing and cleaning activities are conducted.

5        365. Waterkeeper is informed and believes, and thereon alleges, that prohibited  
6 non-storm water discharges have discharged and continue to discharge from the Facility,  
7 in violation of the Storm Water Permit and/or CWA Section 301(a). 33 U.S.C. § 1311(a).

8        366. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
9 Owner's and/or Operator's violations of Discharge Prohibitions of the Storm Water  
10 Permit are ongoing and continuous.

11        367. Each and every violation of the Storm Water Permit's Discharge  
12 Prohibitions is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C.  
13 § 1311(a).

14        368. By committing the acts and omissions alleged above, the Facility Owner  
15 and/or Operator is subject to an assessment of civil penalties for each and every violation  
16 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and  
17 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

18        369. An action for injunctive relief under the CWA is authorized by 33 U.S.C.  
19 § 1365(a). Continuing commission of the acts and omissions alleged above would  
20 irreparably harm Waterkeeper, Waterkeeper's members, and the citizens of the State of  
21 California, for which harm they has no plain, speedy, or adequate remedy at law.

22        370. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
23 an actual controversy exists as to the rights and other legal relations of the Parties.

24        WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
25 hereafter.

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28



**FOURTH CAUSE OF ACTION**

**Defendant's Failure to Adequately Develop, Implement, and/or  
Revise a Storm Water Pollution Prevention Plan in Violation of the  
Storm Water Permit and the Clean Water Act.**

**33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

371. Waterkeeper incorporates the allegations contained in the above paragraphs as though fully set forth herein.

372. Waterkeeper is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed and continues to fail to develop an adequate SWPPP for the Facility, in violation of the Storm Water Permit.

373. Waterkeeper is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed and continues to fail to adequately implement a SWPPP for the Facility, in violation of the Storm Water Permit.

374. Waterkeeper is informed and believes, and thereon alleges, that Facility Owner and/or Operator has failed and continues to fail to adequately revise a SWPPP for the Facility, in violation of the Storm Water Permit.

375. The Facility Owner and/or Operator has been in violation of the Storm Water Permit at the Facility every day from June 3, 2011, to the present.

376. The Facility Owner's and/or Operator's violations of the Storm Water Permit and the CWA at the Facility are ongoing and continuous.

377. The Facility Owner and/or Operator will continue to be in violation of the Storm Water Permit and the CWA each and every day the Facility Owner and/or Operator fails to adequately develop, implement, and/or revise the SWPPP for the Facility.

378. Each and every violation of the Storm Water Permit SWPPP requirements at the Facility is a separate and distinct violation of the CWA.

379. By committing the acts and omissions alleged above, the Facility Owner and/or Operator is subject to an assessment of civil penalties for each and every violation



1 of the CWA occurring from June 3, 2011 to the present, pursuant to Sections 309(d) and  
2 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

3 380. An action for injunctive relief under the CWA is authorized by Section  
4 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and  
5 omissions alleged above would irreparably harm Waterkeeper, its members, and the  
6 citizens of the State of California, for which harm they have no plain, speedy, or adequate  
7 remedy at law.

8 381. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
9 an actual controversy exists as to the rights and other legal relations of the Parties.

10 WHEREFORE, Plaintiff prays for judgment against the Defendant as set forth  
11 hereafter.

12 **FIFTH CAUSE OF ACTION**

13 **Defendant's Failure to Adequately Develop, Implement, and/or**  
14 **Revise a Monitoring and Reporting Plan in Violation of the Storm**  
15 **Water Permit and the Clean Water Act.**

16 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

17 382. Waterkeeper incorporates the allegations contained in the above paragraphs  
18 as though fully set forth herein.

19 383. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
20 Owner and/or Operator has failed and continues to fail to develop an adequate M&RP for  
21 the Facility, in violation of the Storm Water Permit.

22 384. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
23 Owner and/or Operator has failed and continues to fail to adequately implement an  
24 M&RP for the Facility, in violation of the Storm Water Permit.

25 385. Waterkeeper is informed and believes, and thereon alleges, that the Facility  
26 Owner and/or Operator has failed and continues to fail to adequately revise an M&RP for  
27 the Facility, in violation of the Storm Water Permit.

28 386. The Facility Owner and/or Operator has been in violation of the Storm  
Complaint



1 Water Permit's monitoring requirements at the Facility every day from June 3, 2011, to  
2 the present.

3 387. The Facility Owner's and/or Operator's violations of the Storm Water  
4 Permit's monitoring requirements and the CWA at the Facility are ongoing and  
5 continuous.

6 388. The Facility Owner and/or Operator will continue to be in violation of  
7 Section B and Provision E(3) the 1997 Permit, Section XI of the 2015 Permit, and the  
8 CWA each and every day it fails to adequately develop, implement, and/or revise an  
9 M&RP for the Facility.

10 389. Each and every violation of the Storm Water Permit M&RP requirements at  
11 the Facility is a separate and distinct violation of the CWA.

12 390. By committing the acts and omissions alleged above, the Facility Owner  
13 and/or Operator is subject to an assessment of civil penalties for each and every violation  
14 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and  
15 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

16 391. An action for injunctive relief under the CWA is authorized by Section  
17 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and  
18 omissions alleged above would irreparably harm Waterkeeper, its members, and the  
19 citizens of the State of California, for which harm they have no plain, speedy, or adequate  
20 remedy at law.

21 392. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
22 an actual controversy exists as to the rights and other legal relations of the Parties.

23 WHEREFORE, Plaintiff prays for judgment against the Defendant as set forth  
24 hereafter.

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**SIXTH CAUSE OF ACTION**

**Defendant's Failure to Report as Required by the Storm Water Permit in Violation of the Storm Water Permit and the Clean Water Act.**

**33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

393. Waterkeeper incorporates the allegations contained in the above paragraphs as though fully set forth herein.

394. Waterkeeper is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed and continues to fail to submit accurate Annual Reports to the Regional Board, in violation of Sections B(14), C(9), and C(10) of the 1997 Permit.

395. Waterkeeper is informed and believes, and thereon alleges, that the Facility Owner's and/or Operator's Annual Reports failed to meet the monitoring and reporting requirements of the Storm Water Permit, in violation of Section B(14) of the 1997 Permit.

396. Waterkeeper is informed and believes, and thereon alleges, that based on the above-described violations of the Storm Water Permit the Facility Owner's and/or Operator's annual reports submitted pursuant to the 2015 Permit will fail to meet the requirements of Section XVI(B) of the 2015 Permit.

397. Waterkeeper is informed and believes, and thereon alleges, that the Facility Owner and/or Operator has failed to submit complete Annual Reports to the Regional Board, in violation of Sections B(14), C(9), C(10) and C(11) of the 1997 Permit.

398. The Facility Owner and/or Operator has been in violation of Sections B(14), C(9), C(10), and/or C(11) of the 1997 Permit and CWA every day since at least June 3, 2011.

399. The Facility Owner's and/or Operator's violations of the reporting requirements of the Storm Water Permit and the CWA are ongoing and continuous.

400. By committing the acts and omissions alleged above, the Facility Owner



1 and/or Operator is subject to an assessment of civil penalties for each and every violation  
2 of the CWA occurring from June 3, 2011, to the present, pursuant to Sections 309(d) and  
3 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

4 401. An action for injunctive relief under the CWA is authorized by Section  
5 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and  
6 omissions alleged above would irreparably harm Waterkeeper, its members, and the  
7 citizens of the State of California, for which harm they have no plain, speedy, or adequate  
8 remedy at law.

9 402. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
10 an actual controversy exists as to the rights and other legal relations of the Parties.

11 WHEREFORE, Plaintiff prays judgment against the Defendant as set forth  
12 hereafter.

13 **VI. RELIEF REQUESTED**

14 403. Plaintiff respectfully request that this Court grant the following relief:

15 a. A Court order declaring the Defendant to have violated and to be in  
16 violation of Sections 301(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and  
17 (b); for discharging pollutants from the Facility in violation of a permit issued pursuant to  
18 Section 402(p) of the CWA, 33 U.S.C. § 1342(p); for failing to meet effluent limitations  
19 which include BAT/BCT requirements; and for failing to comply with the substantive  
20 and procedural requirements of the Storm Water Permit.

21 b. A Court order enjoining Defendant from discharging pollutants not in  
22 compliance with an NPDES permit;

23 c. A Court order requiring Defendant to implement affirmative injunctive  
24 measures designed to eliminate Defendant's violations of the substantive and procedural  
25 requirements of the Storm Water Permit and the Clean Water Act;

26 d. A Court order assessing civil monetary penalties for each violation of the  
27 CWA at \$37,500 per day per violation for violations occurring since June 3, 2011, as  
28



1 permitted by CWA Section 309(d), 33 U.S.C. § 1319(d) and Adjustment of Civil  
2 Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (2009);

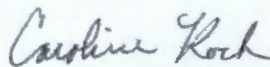
3 e. A Court order awarding Plaintiff their reasonable costs of suit, including  
4 attorney, witness, expert, and consultant fees, as permitted by Section 505(d) of the Clean  
5 Water Act, 33 U.S.C. § 1365(d); and

6 f. Any other relief as this Court may deem appropriate.  
7

8 Dated: August 3, 2016

Respectfully submitted,

9 LAWYERS FOR CLEAN WATER, INC.  
10

11 

12 Caroline Koch  
13 Attorney for Plaintiffs  
14 Inland Empire Waterkeeper and Orange  
15 County Coastkeeper  
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**Exhibit A**





**Inland Empire Waterkeeper**

*Advocacy • Education • Restoration • Enforcement*

6876 Indiana Avenue, Suite D

Riverside, CA 92506

Phone (951) 530-8823

Fax (951) 530-8824

Website [www.iewaterkeeper.org](http://www.iewaterkeeper.org)

June 3, 2016

**VIA CERTIFIED MAIL**

Robertson's Ready Mix  
Sun City Batch Plant  
27050 Watson Road  
Sun City, CA 92585

Robertson's Ready Mix, Ltd.,  
a California Limited Partnership  
200 S. Main Street, Suite 200  
Corona, California 92882-2212

Mervyn Encarnacion, Registered Agent for  
Service of Process for Robertson's Ready Mix,  
Ltd., a California Limited Partnership  
200 S. Main Street, Suite 200  
Corona, California 92882-2212

**Re: Notice of Violation and Intent to File Suit Under the Clean Water Act**

To Whom It May Concern:

I am writing on behalf of Inland Empire Waterkeeper and Orange County Coastkeeper (collectively "Waterkeeper") regarding violations of the Clean Water Act<sup>1</sup> and California's Industrial Storm Water Permit<sup>2</sup> ("Storm Water Permit") occurring at the industrial facility with its main address at: 27050 Watson Road, Sun City, CA 92585 ("Facility"). The purpose of this letter is to put Sun City Batch Plant and Robertson's Ready Mix, Ltd., a California Limited Partnership, (collectively "Robertson's"), as the owners and/or operators of the Facility, on notice of the violations of the Storm Water Permit occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Robertson's is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. The Clean Water Act requires that notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the chief administrative officer of the water pollution control agency for the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1).

This letter is being sent to you as the responsible owner and operator of the Facility, or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33

<sup>1</sup> Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

<sup>2</sup> National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ.



U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Robertson's that Waterkeeper intends to file a federal enforcement action against Robertson's for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

## **I. BACKGROUND**

### **A. Inland Empire Waterkeeper and Orange County Coastkeeper**

Inland Empire Waterkeeper's office is located at 6876 Indiana Avenue, Suite D, Riverside, California 92506. Inland Empire Waterkeeper is a program of Orange County Coastkeeper. Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Together, Inland Empire Waterkeeper and Orange County Coastkeeper have over 2,000 members who live and/or recreate in and around the Santa Ana River watershed. Waterkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Inland Empire watershed. To further these goals, Waterkeeper actively seeks federal and state agency implementation of the Clean Water Act and other environmental regulations, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Members of Waterkeeper use and enjoy the waters that Robertson's discharges into, including the Santa Ana River and its tributaries. Members of Waterkeeper use and enjoy the Santa Ana River and its tributaries to swim, wade, picnic, hike, view wildlife, and engage in scientific study including monitoring activities. The discharge of pollutants and emissions of fugitive dust from the Facility impairs each of these uses. Further, discharges of polluted storm water and fugitive dust emissions from the Facility are ongoing and continuous. Thus, the interests of Waterkeeper's members have been, are being, and will continue to be adversely affected by Robertson's failure to comply with the Clean Water Act and the Storm Water Permit.

### **B. The Owners and/or Operators of the Facility**

Information available to Waterkeeper indicates that Robertson's Ready Mix, Ltd., is an owner and/or operator of the Facility. Robertson's Ready Mix, Ltd. is an active California limited partnership and its registered agent is: Mervyn Encarnacion, 200 S. Main Street, Suite 200, Corona, California 92882. Pursuant to California Corporations Code section 15904.04, Robertson's Ready Mix, Ltd.'s general partners are jointly and severally liable for the Clean Water Act violations described herein. Further, to the extent Robertson's Ready Mix, Ltd.'s limited partners own and/or operate the Facility together with Robertson's Ready Mix, Ltd.

Waterkeeper refers to Robertson's Sun City Batch Plant and Robertson's Ready Mix, Ltd. together as the "Facility Owners and/or Operators." The Facility Owners and/or Operators have violated and continue to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the Facility into local surface waters. As explained herein, the Facility Owners and/or Operators are liable for violations of the Storm Water Permit and the Clean Water Act.



**C. The Facility's Storm Water Permit Coverage**

Facilities that discharge storm water associated with specified industrial activities are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* Storm Water Permit, Finding ¶¶ 12, 17.

Robertson's submitted an NOI to obtain Storm Water Permit coverage for the Facility on March 30, 1992. The NOI submitted in March 1992 ("1992 NOI") identifies the owner/operator of the Facility as "Robertson's Ready Mix" and the Facility name and location as "27026 Watson Road, Perris, CA 92380." The 1992 NOI lists the Facility as 7 acres in size and the 2% impervious. The 1992 NOI states the Facility is "Regulated by Storm water Effluent Guidelines (40 CFR Subchapter N)". Additionally, the 1992 NOI states the Facility's storm water discharges "indirectly to waters of U.S." and the closest receiving water as the San Jacinto River, and that the materials handled and/or stored outdoors as petroleum products-diesel; sand and gravel; and Portland cement.

Robertson's submitted an NOI to continue Storm Water Permit coverage for the Facility on June 16, 1997. The NOI submitted in June 1997 ("1997 NOI") identifies the owner/operator of the Facility as "Robertson's Ready Mix" and the Facility name and location as "Perris Batch Plant, 27050 Watson Road, Perris, CA 92381." The 1997 NOI lists the Waste Discharge Identification ("WDID") number for the Facility as 8 33S005069.

On September 29, 2015, Robertson's submitted an NOI to continue the Facility's coverage under the Permit ("2015 NOI"). The 2015 NOI identifies the owner/operator of the Facility as "Robertsons Ready Mix" and the Facility name and location as "Robertsons Ready Mix Perris, 27050 Watson Road, Sun City, CA, 92585." The 2015 NOI lists the Facility site size as "6.7 Acres." The industrial area exposed to storm water is listed as "57100 Sq.Feet", and the percentage of imperviousness is not listed.<sup>3</sup> The 2015 NOI lists the WDID number for the Facility as 8 33I005069. Additionally, the 2015 NOI lists the San Jacinto River as the receiving water (indirectly).

The 1997 and 2015 NOIs list the Standard Industrial Classification ("SIC") code for the Facility as 3273 (Ready-Mixed Concrete). SIC code 3273 facilities must obtain Storm Water Permit coverage for the entire facility. *See* Storm Water Permit, Attachment A, ¶ 2. Information available to Waterkeeper, including the Facility's Storm Water Pollution Prevention Plan ("SWPPP"),<sup>4</sup> confirms there is vehicle and equipment maintenance and storage at the Facility, which indicates SIC code 4212 (local trucking without storage) also applies to the Facility.

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<sup>3</sup> To the extent the Facility Owners and/or Operators have or intend to limit the Storm Water Permit coverage at the Facility based on the asserted acreage "exposed to storm water," Waterkeeper puts the Facility Owners and/or Operators on notice that they have not complied, and cannot comply, with Section XVII.E.1. of the Storm Water Permit and the required "no exposure" certification. Further, to the extent the Facility Owners and/or Operators failed to obtain Permit coverage for all areas of industrial activity at the Facility, storm water discharges associated with industrial activities from unpermitted portions of the Facility violate section 301(a) of the Clean Water Act.

<sup>4</sup> The Facility SWPPP publicly available via the SMARTS database is labeled "March 2015" and is signed by the Facility's "legally responsible person" on September 30, 2015. Waterkeeper also obtained the March 2015 SWPPP via a Public Records Act request. Waterkeeper understands that the March 2015 SWPPP is the current SWPPP for the Facility.



**D. Storm Water Pollution and the Waters Receiving Robertson's Discharges**

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations such as the Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Based on EPA's Industrial Stormwater Fact Sheet for Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities, polluted discharges from concrete mixing facilities such as the Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, and arsenic; chemical oxygen demand ("COD"); biochemical oxygen demand ("BOD"); total suspended solids ("TSS"); benzene; gasoline and diesel fuels; fuel additives; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

The Facility discharges into a municipal storm drain system which then discharges to the San Jacinto River, Canyon Lake, Lake Elsinore, Temescal Creek Reach 6, Reach 5, Reach 4, Reach 3, Reach 2, Reach 1B, Reach 1A, Santa Ana River Reach 3, Reach 2, Reach 1, Tidal Prism of Santa Ana River, and finally into the Pacific Ocean ("Receiving Waters"). Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities. The public's use of local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

The California Regional Water Quality Control Board for the Santa Ana Region ("Regional Board") issued the *Santa Ana River Basin Water Quality Control Plan* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include Water Contact Recreation; Non-contact Water Recreation, Agricultural Supply, Municipal and Domestic Supply, Groundwater Recharge, Warm Freshwater Habitat; Wildlife Habitat; Rare, Threatened or Endangered Species. *See* Basin Plan at Table 3-1. According to the 2012 303(d) List of Impaired Water Bodies, Canyon Lake is impaired for nutrients and pathogens; Temescal Creek Reach 1 is impaired for pH; Temescal Creek Reach 6 is impaired for Indicator Bacteria; and the Santa Ana River Reach 3 is impaired for Copper, Lead, and pathogens; Santa Ana River Reach 2 is impaired for Indicator Bacteria. Polluted discharges from industrial sites, such as the Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife that depends on these waters.



## **II. THE FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS**

### **A. The Facility Site Description and Industrial Activities**

The Facility is an active concrete batch plant consisting of one section of approximately 6.7 acres. Raw materials, including aggregate (rock, sand, and gravel), cement,<sup>5</sup> fly ash, and admixtures are delivered to the Facility, and are mixed with water to create concrete. These materials, water, and (if applicable) admixtures are added to concrete haul trucks that mix the ingredients together to produce concrete and haul the concrete off site. As part of the concrete production process, unused concrete is returned to the Facility, stored onsite, and recycled. The concrete production process also includes onsite vehicle and mobile equipment operation, parking, fueling, and maintenance.

Accordingly, the Facility's industrial activities include, but are not limited to: concrete mixing; transport of raw materials; unloading of raw materials; outdoor storage of raw materials, including sand, gravel, rock, chemical admixtures, fly ash, cement, and recycled concrete; fueling, repairing, cleaning, and maintaining vehicles and equipment; storage of fuels and hazardous materials, such as diesel fuel, lubricating fluids, new vehicle fluids, and hazardous waste vehicle fluids; washing concrete mixer trucks; and vehicle and equipment parking, fueling, and maintenance.

Information available to Waterkeeper indicates that up to 4500 tons of aggregate, up to 330 tons of cement, up to 100 tons of fly ash, and up to 12,000 gallons of admixtures, may be in process or storage at the Facility at any one time. Additionally, up to 10,240 gallons of fuels, oils, and greases may be stored at the Facility at any one time.

### **B. Pollutants Associated with Robertson's Industrial Activities**

Information available to Waterkeeper indicates that pollutants associated with operations at the Facility include, but are not limited to: pH-affecting substances<sup>6</sup>; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, and arsenic; COD; BOD; TSS<sup>7</sup>; benzene; gasoline and diesel fuels; fuel additives; coolants; trash; and O&G.

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<sup>5</sup> Based on Waterkeeper's review of the Facility SWPPP, cement is stored in "cement storage silos" in the concrete batch plant area of the Facility, and that cement is received in this area. To the extent cement is stored outdoors, storm water discharges from the Facility may be subject to additional effluent limitations set out at 40 C.F.R. § 411.30. Waterkeeper will add additional information and/or violations relevant to the Facility Owners and/or Operators' storage and handling of cement as that information becomes available to Waterkeeper.

<sup>6</sup> Storm water discharged with high pH can damage the gills and skin of aquatic organisms and cause death at levels above 10 standard units. The pH scale is logarithmic and the solubility of a substance varies as a function of the pH of a solution. A one whole unit change in SU represents a tenfold increase or decrease in ion concentration. If the pH of water is too high or too low, the aquatic organisms living within it will become stressed or die.

<sup>7</sup> High concentrations of TSS degrade optical water quality by reducing water clarity and decreasing light available to support photosynthesis. TSS has been shown to alter predator prey relationships (for example, turbid water may make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons, are absorbed onto TSS. Thus, higher concentrations of TSS results in higher concentrations of toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.



Information available to Waterkeeper indicates Robertson's has not properly developed and/or implemented the required best management practices ("BMPs") to address pollutant sources and contaminated discharges. BMPs are necessary at the Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water from the Facility during rain events. Consequently, during rain events, storm water carries pollutants from the Facility's stockpile or material storage area(s), truck parking area(s), fueling and maintenance area(s), add-mix area(s), batch plant area(s), washing area(s), and other areas into the storm sewer system, which flows into the Receiving Waters, in violation of the Storm Water Permit.

Information available to Waterkeeper also indicates that concrete, particulates, and fugitive dust of sand, gravel, and cement have been and continue to be tracked throughout the Facility. These pollutants accumulate at the sand and gravel storage areas and near the silos, the loading and unloading areas, and the driveway leading onto Watson Road. As a result, trucks and vehicles leaving the Facility via the driveway are pollutant sources tracking sediment, dirt, O&G, metal particles, and other pollutants off-site.

Information available to Waterkeeper indicates that raw materials are stored outside and weighing and mixing activities occur outside without adequate cover or containment resulting in discharges of polluted storm water and fugitive dust emissions. Additionally, metal parts and hazardous materials associated with maintenance, fueling, and washing of the concrete trucks occur outside without secondary containment or other measures to prevent polluted storm water and prohibited non-storm water discharges from discharging from the Facility. These activities are all pollutant sources at the Facility.

Robertson's failure to develop and/or implement required BMPs also results in prohibited discharges of non-storm water in violation of the Storm Water Permit and the Clean Water Act. Information available to Waterkeeper indicates that Robertson's discharges process waters from equipment washing and other activities as part of its industrial operations.

### **C. Facility Storm Water Flows and Discharge Location**

The Facility SWPPP states the site is approximately 50% pervious and is considered one (1) drainage area labeled "Drainage Area 1 (DA1)." The Facility Owners and/or Operators identify one (1) discharge point, "Outfall 1 (OF1)".

The Facility's SWPPP states that DA1 consists of the entire site. The SWPPP states that, "Storm water flows to the sump basin at the central portion of the site. Overflow from the sump drains into the v-ditch that runs along the perimeter of the property. The inlet of the ditch is at the southern portion of the site, and runoff flows north along the western property line, and then west along the norther property line." The v-ditch ends at OF1, which is at the northwest corner of the property. The SWPPP indicates OF1 will be sampled. However, the Building Materials Industry Group Monitoring Plan lists this Facility as having two (2) discharge locations, rather than the SWPPP's indicated one (1) discharge point.

Information available to Waterkeeper indicates that storm water runoff also discharges onto Watson Road from the Facility at two (2) additional locations. Specifically, based on Waterkeeper



observations, storm water discharges from the Facility driveway onto Watson Road and from the unpaved area west of the Facility driveway. Further, the 2012/2013 and 2013/2014 Annual Reports include a "Discharge Location Description" as "Entrance." And the 2014/2015 Annual Report describes a discharge location at the Facility as "South Ent."

Thus, information available to Waterkeeper indicates that there are at least three (3) discharge locations at the Facility.

### III. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT

In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); *see also* Storm Water Permit, Fact Sheet at VII.

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Waterkeeper refers to as the "1997 Permit." On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water Permit was reissued. For purposes of this Notice Letter, Waterkeeper refers to the reissued permit as the "2015 Permit." The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its terms are as stringent, or more stringent, than the terms of the 1997 Permit. *See* 2015 Permit, Findings, ¶ 6. Accordingly, Robertson's is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) ("Limitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect").

The Clean Water Act requires that any person discharging pollutants to a water of the United States from a point source<sup>8</sup> obtain coverage under an NPDES permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 CFR § 122.26(c)(1). The Storm Water Permit is an NPDES permit which regulates storm water discharges associated with certain industrial activities. The Robertson's Owners and/or Operators discharge pollutants from point sources at the Facility to waters of the United States without NPDES permit coverage in violation of Section 301(a) of the Clean Water Act.

In California, industrial dischargers not covered under an individual NPDES permit must comply with the terms of the Storm Water Permit to lawfully discharge storm water associated with industrial activity. *See id.*; *see also* 1997 Permit, Fact Sheet p. VII; 2015 Permit, Fact Sheet, p. 9.

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<sup>8</sup> A point source is defined as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14); *see* 40 C.F.R. § 122.2.



Industrial activities conducted at the Facility fall under SIC codes 3273, which require Robertson's obtain Storm Water Permit coverage for the entire Facility.

**A. Unauthorized Non-Storm Water Discharges from the Facility in Violation of Storm Water Permit Discharge Prohibitions**

Except as authorized by Special Conditions D(1) of the 1997 Permit, Discharge Prohibition A(1) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. The 2015 Permit includes the same discharge prohibition. *See* 2015 Permit, Discharge Prohibition III.B. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* Storm Water Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III.B.

Information available to Waterkeeper indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, unauthorized non-storm water discharges from the Facility during concrete and water truck filling, road watering, and/or when truck washing and cleaning activities occur. The Facility Owners and/or Operators conduct these activities without BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the Storm Water Permit and thus are always prohibited.

Waterkeeper puts the Facility Owners and/or Operators on notice that the Storm Water Permit Discharge Prohibitions are violated each time unauthorized non-storm water is discharged from the Facility. *See* 1997 Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III.B. These discharge violations are ongoing and will continue until the Facility Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtain separate NPDES permit coverage. Each time the Facility Owners and/or Operators discharge prohibited non-storm water in violation of Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Waterkeeper will update the number and dates of violations when additional information becomes available. Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

**B. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Effluent Limitations**

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable ("BAT") for toxic<sup>9</sup> and non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for

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<sup>9</sup> Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, arsenic, lead, benzene, and zinc, among others.



conventional pollutants.<sup>10</sup> The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V.A.

Information available to Waterkeeper, including its review of publicly available information and observations, indicates that the Facility Owners and/or Operators have not implemented BMPs at the Facility that achieve BAT/BCT. Consistent with Waterkeeper's review of available information and direct observations, the analytical results of storm water sampling at the Facility demonstrate that the Facility Owners and/or Operators have failed and continue to fail to implement BAT/BCT, as required. Specifically, Facility discharges have exceeded EPA Benchmarks for numerous pollutants. EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit.<sup>11</sup> The table in Exhibit 1 sets forth the results of sampling at the Facility conducted by the Facility Owners and/or Operators. For example, a storm water sample collected by the Facility's representative on January 5, 2016, contained 4.84 mg/L of iron, 4.84 times higher than the EPA Benchmark for iron, 106 mg/L of TSS, 1.06 times than the EPA Benchmark for TSS, and a pH level of 5, 10 times greater than the EPA Benchmark for pH. The exceedances of EPA Benchmarks as set forth in Exhibit 1 demonstrate that the Facility Owners and/or Operators have failed and continue to fail to develop and/or implement BMPs at the Facility as required to achieve compliance with the BAT/BCT standards.

Information available to Waterkeeper indicates that the Facility Owners and/or Operators have failed and continue to fail to develop and/or implement BMPs at the Facility as required to achieve compliance with the BAT/BCT standards. Waterkeeper puts the Facility Owners and/or Operators on notice that because of the lack of BMPs that meet BAT/BCT standards, the Storm Water Permit Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.*, Exhibit 2 (setting forth dates of rain events resulting in a discharge at the Facility).<sup>12</sup> These discharge violations are ongoing and will continue every time Robertson's discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Each time Robertson's discharges polluted storm water in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V.A. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Waterkeeper will update the dates of violation when additional information and data becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

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<sup>10</sup> Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.

<sup>11</sup> *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009 ("Multi-Sector Permit"), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

<sup>12</sup> Dates of significant rain events are measured at Rain Station KRAL, located at the Riverside Municipal Airport in Riverside, California, and at Rain Station KRIV, located at March Air Reserve Base. A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility.



Further, Waterkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Effluent Limitation V.A. is a separate, independent requirement with which Robertson's must comply, and that carrying out the iterative process triggered by exceedances of the Numeric Action Levels ("NALs") listed at Table 2 of the 2015 Permit does not amount to compliance with Effluent Limitation V.A. The NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.<sup>13</sup> And even if the Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of Effluent Limitation V.A. described in this Notice Letter are ongoing.

**C. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations**

Receiving Water Limitation C(2) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").<sup>14</sup> The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.A. Discharges that contain pollutants in excess of an applicable WQS violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.

Receiving Water Limitation C(1) of the 1997 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1); 2015 Permit, Receiving Water Limitation VI.B.

Storm water sampling at the Facility demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS. For example, a storm water sample collected on January 5, 2016, from OF1 included a pH level of 5 s.u., 10 times below the *Basin Plan* criteria range for pH. These exceedances of WQS demonstrate that Robertson's has violated and continues to violate the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(2); 2015 Permit, Receiving Water Limitation VI.A.

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<sup>13</sup> "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

<sup>14</sup> The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan. Industrial storm water discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).



As explained herein, the Receiving Waters are impaired for some of the same pollutants discharging from the Facility and thus unable to support the designated beneficial uses. The 2012 303(d) List of Impaired Water Bodies lists the Receiving Waters as impaired for pH, pathogens, Copper, Lead, and Indicator Bacteria. Information available to Waterkeeper indicates that facilities of this type often discharge storm water which contains elevated concentrations of pollutants, such as aluminum, iron, copper, lead, and pH, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from this type of facility also adversely impact human health. These types of harmful discharges are violations of the Storm Water Permit Receiving Water Limitations. *See* 1997 Permit, Receiving Water Limitation C(1) and C(2); 2015 Permit, Receiving Water Limitation VI.A and VI.B.

Waterkeeper puts the Facility Owners and/or Operators on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See, e.g.*, Exhibit 2 (setting forth dates of rain events resulting in a discharge at the Facility). These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(2) of the 1997 Permit, Receiving Water Limitation VI.A. of the 2015 Permit VI.A, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI.B. of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Waterkeeper will update the dates of violation when additional information and data becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

Further, Waterkeeper puts the Facility Owners and/or Operators on notice that 2015 Permit Receiving Water Limitations are separate, independent requirements with which Robertson's must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality based criteria relevant to determine whether an industrial facility has caused or contributed to an exceedance of a water quality standard.<sup>15</sup> And even if the Facility Owners and/or Operators submit any Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of the Receiving Water Limitations described in this Notice Letter are ongoing.

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<sup>15</sup> "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.



**D. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan**

The Storm Water Permit requires permittees to develop and implement Storm Water Pollution Prevention Plans prior to conducting, and in order to continue, industrial activities. The specific SWPPP requirements of the 1997 Permit and the 2015 Permit are set out below.

**1. 1997 SWPPP Requirements**

Section A(1) and Provision E(2) of the 1997 Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the 1997 Permit SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 1997 Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations.

To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9) of the 1997 Permit, and must be revised as necessary to ensure compliance with the Storm Water Permit. 1997 Permit, Sections A(9) and (10). Sections A(3) – A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (*see* 1997 Permit, Section A(4)); a list of significant materials handled and stored at the site (*see* 1997 Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (*see* 1997 Permit, Section A(6)).

Sections A(7) and A(8) of the 1997 Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

**2. 2015 SWPPP Requirements**

As with the SWPPP requirements of the 1997 Permit, Sections X(A) - (H) of the 2015 Permit require dischargers to have developed and implemented a SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objective of the SWPPP requirements are still to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 2015 Permit, Section X(C).



The SWPPP must include, among other things and consistent with the 1997 Permit, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutants control measures; a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification and elimination of non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities, and; the identification of individuals and their current responsibilities for developing and implementing the SWPPP. 2015 Permit, Section X(A)-(H).

Further, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit, Section X(A)-(B). Like the 1997 Permit, the 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit, Section X(B) and Section XV.

3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit SWPPP Requirements

Information available to Waterkeeper indicates that the Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, in violation of Section A(4) of the 1997 Permit and Section X(E)(3) of the 2015 Permit, there is no site map attached to the SWPPP. To the extent the site map uploaded to SMARTS, with a February 2015 date, could be the SWPPP site map, it fails to identify all areas of industrial activity, all associated points of discharge, areas of actual and potential pollutant contact, including the extent of pollution-generating activities and all areas of materials storage, and nearby water bodies.

Further, the narrative portions of the SWPPP fail to include all sources of unauthorized non-storm water discharges in violation of Section A(6) of the 1997 Permit and Section X(G)(1)(e) of the 2015 Permit. The SWPPP also fails to include an adequate assessment of potential pollutant sources or BMPs that achieve the BAT/BCT standards, as required by Section A(6) of the 1997 Permit and Sections X(G) and X(H) of the 2015 Permit. Nor have the Facility Owners and/or Operators revised the Facility SWPPP, as required by Section A(7) of the 1997 Permit and Section X(D)(2)(a) of the 2015 Permit.

The Facility Owners and/or Operators have failed and continue to fail to adequately develop, implement, and/or revise the SWPPP, in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or



properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's SWPPP requirements since at least June 3, 2011. These violations are ongoing, and Waterkeeper will include additional violations when information becomes available. The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

**E. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program**

The Storm Water Permit requires permittees to develop and implement storm water monitoring and reporting programs ("M&RPs") prior to conducting, and in order to continue, industrial activities. The specific M&RP requirements of the 1997 Permit and the 2015 Permit are set out below.

**1. 1997 Permit Requirements**

Section B(1) and Provision E(3) of the 1997 Permit require facility operators to develop and implement an adequate M&RP by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 1997 Permit, Section B(2).

The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.* Sections B(3) – B(16) of the 1997 Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* 1997 Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4). Sections B(5) and B(7) of the 1997 Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged.

The Facility was and/or is a member of the Building Materials Industry Group Monitoring Program, and thus the Facility Owners and/or Operators must comply with the group monitoring provisions set forth in Section B(15) of the 1997 Permit. Under Section B(15) of the 1997 Permit, the Facility Owners and/or Operators must collect at least two (2) samples from each discharge point at the Facility over a five (5) year period. *See* 1997 Permit, Sections B(5), B(7), and B(15).



Storm water samples must be analyzed for TSS, pH, specific conductance ("SC"), total organic carbon or O&G, and other pollutants that are likely to be present in the facility's discharges in significant quantities, such as aluminum and nitrate plus nitrite. *See* Storm Water Permit, Section B(5)(c). The 1997 Permit requires facilities classified as SIC code 3273, such as the Facility, to also analyze storm water samples for iron. *Id.*; *see also* 1997 Permit, Table D, Sector E.

Section B(7)(d) of the 1997 Permit allows for the reduction of sampling locations in very limited circumstances when "industrial activities and BMPs within two or more drainage areas are substantially identical." If a discharger seeks to reduce sampling locations, the "[f]acility operators must document such a determination in the annual report." *Id.*

## 2. 2015 Permit Requirements

As with the 1997 M&RP requirements, Sections X(I) and XI(A)-XI(D) of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is still to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

As an *increase* in observation frequency to the 1997 Permit, Section XI(A) of the 2015 Permit requires all visual observations at least once each month, and at the same time sampling occurs at a discharge location. Observations must document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. 2015 Permit, Section XI(A)(2). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. 2015 Permit, Section XI(A)(3).

Section XI(B)(1-5) of the 2015 Permit requires permittees to collect storm water discharge samples from a qualifying storm event<sup>16</sup> as follows: 1) from each discharge location, 2) from two storm events within the first half of each reporting year<sup>17</sup> (July 1 to December 31), 3) from two storm events within the second half of each reporting year (January 1 to June 30), and 4) within four hours of the start of a discharge, or the start of facility operations if the qualifying storm event occurs within the previous 12-hour period. Section XI(B)(11) of the 2015 Permit, among other requirements, provides that permittees must submit all sampling and analytical results for all samples via SMARTS within 30 days of obtaining all results for each sampling event.

The parameters to be analyzed are also consistent with the 1997 Permit, except the 2015 Permit no longer requires SC be sampled. Specifically, Section XI(B)(6)(a)-(b) of the 2015 Permit requires permittees to analyze samples for TSS, oil & grease, and pH. Section XI(B)(6)(c) of the 2015 Permit requires permittees to analyze samples for pollutants associated with industrial

<sup>16</sup> The 2015 Permit defines a qualifying storm event as one that produces a discharge for at least one drainage area, and is preceded by 48-hours with no discharge from any drainage areas. 2015 Permit, Section XI(B)(1).

<sup>17</sup> A reporting year is defined as July 1 through June 30. 2015 Permit, Findings, ¶ 62(b).



operations. Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads.

3. The Facility Owners and/or Operators Have Violated and Continue to Violate the Storm Water Permit M&RP Requirements

The Facility Owners and/or Operators have been and continue to conduct operations at the Facility with an inadequately developed, implemented, and/or revised M&RP. For example, the Facility Owners and/or Operators have failed and continue to fail to develop an M&RP that requires the Facility Owners and/or Operators to analyze storm water discharges from the Facility for all required parameters by failing to specify that storm water discharges will be analyzed for, at a minimum, aluminum, lead, zinc, cadmium, chromium, copper, arsenic, COD, and BOD, in violation of Section B(5)(c) of the 1997 Permit and Section XI(B)(6)(c) of the 2015 Permit. Nor have the Facility Owners and/or Operators developed an M&RP that requires analysis for pollutants listed on the 2012 303(d) list that are associated with the industrial activities at the Facility, including copper and lead, in violation of Section XI(B)(6) of the 2015 Permit. In addition, the Facility Owners and/or Operators failed and continue to fail to develop an M&RP that requires that the applicable test methods be used when analyzing storm water samples from the Facility.

The Facility Owners and/or Operators also failed to collect and analyze storm water samples as required by the Storm Water Permit. For example, for the past five (5) years the Facility Owners and/or Operators have not collected storm water samples as was required in violation of Sections B(5), B(7), and B(15) of the 1997 Permit. Specifically, pursuant to the applicable group monitoring plan, the Facility Owners and/or Operators were required to collect samples in the 2009/2010, 2011/2012, and 2013/2014 wet seasons. While the Facility Owners and/or Operators state in the 2012/2013 and 2013/2014 Annual Reports that the Facility "is a construction based business and during inclement weather our facility is closed," Waterkeeper has observed and has obtained publicly available information demonstrating that, in fact, the Facility does operate during storm events. This fact is supported by the Facility Owners and/or Operators recent collection of storm water samples from the Facility during a rain event.

In fact, Robertson's collected its first storm water sample for the Facility on January 5, 2016. However, the Facility Owners and/or Operators failed to analyze the January 5 sample for all required contaminants, including copper, lead, and aluminum, in violation of Section XI(B)(6) of the 2015 Permit. *See* Exhibit 1.

The Facility Owners' and/or Operators' failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise an M&RP that complies with the requirements of the Storm Water Permit. Every day that the Facility Owners and/or Operators conduct operations in violation of the specific monitoring requirements of the Storm Water Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least June 3, 2011. These violations are ongoing, and Waterkeeper will include additional violations when information becomes available. The Facility



Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

**F. Failure to Comply with the Storm Water Permit's Reporting Requirements**

Section B(14) of the 1997 Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes the same annual reporting requirement. See 2015 Permit, Section XVI.

The Facility Owners and/or Operators have failed and continue to fail to submit Annual Reports that comply with these reporting requirements. For example, in each Annual Report since the filing of the 2010/2011 Annual Report, the Facility Owners and/or Operators certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Waterkeeper indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility contain concentrations of pollutants above Benchmark Levels, thus demonstrating that the SWPPP's BMPs do not adequately address existing potential pollutant sources. Further, the Facility's SWPPP does not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

The Facility Owners and/or Operators have also submitted incomplete Annual Reports. For example, on page 3 of the 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015 Annual Reports, the answers are not completely filled out and those answers regarding sampling of storm water discharging from the Facility are answered in the positive, while no storm events were actually sampled, as indicated on page 2 of the Annual Report.

Additionally, in the 2010/2011 and 2011/2012 Annual Reports, the Facility Owners and/or Operators failed to include required explanations for its failures to conduct certain required sampling and/or observations. In the 2012/2013 and 2013/2014 Annual Reports, as the reason no samples were collected the Facility Owners and/or Operators state that the Facility "is a construction based business and during inclement weather our facility is closed." Not only does information available to Waterkeeper demonstrate that the Facility does operate during storm events, the 1997 Permit and the 2015 Permit do not excuse failures to collect required samples on this basis. According to the BMI Group Monitoring Plan, the Facility was scheduled to collect storm water samples during the 2013/2014 Wet Season and during the 2015/2016 reporting year.

In addition, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce



and prevent recurrence of the noncompliance. Storm Water Permit, Section C(11)(d). The Facility Owners and/or Operators have not reported non-compliance as required.

Information available to Waterkeeper indicates that the Facility Owners and/or Operators have submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, the Facility Owners and/or Operators are in daily violation of the Storm Water Permit. Every day the Facility Owners and/or Operators conduct operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owners and/or Operators have been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least June 3, 2011. These violations are ongoing, the 2015 Permit's annual reporting requirements are as stringent as the 1997 Permit requirements, and Waterkeeper will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements (*see* 2015 Permit, Sections XII. and XVI.). The Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since June 3, 2011.

#### **IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT**

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009.

In addition to civil penalties, Waterkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Waterkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

#### **V. CONCLUSION**

Waterkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Waterkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for Robertson's violations of the Storm Water Permit.

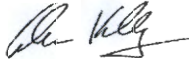


If you wish to pursue settlement discussions please contact Waterkeeper's legal counsel:

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Sincerely,



Colin Kelly  
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Inland Empire Waterkeeper  
Orange County Coastkeeper



**SERVICE LIST**

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**Exhibit 1**



## Exhibit 1

## Sun City Sample Exceedance Chart

Sample collected by Waterkeeper (W) or Discharger (D)	Date of sample collection	Parameter	Result	Units	Benchmark	Magnitude of Benchmark Exceedance	CTR Criteria/WQO	Magnitude of CTR/WQO Exceedance
2010-2011 WET SEASON								
<i>no samples collected</i>								
2011-2012 WET SEASON								
<i>no samples collected</i>								
2012-2013 WET SEASON								
<i>no samples collected</i>								
2013-2014 WET SEASON								
<i>no samples collected</i>								
2014-2015 WET SEASON								
<i>no samples collected</i>								
2015-2016 REPORTING YEAR								
D	1/5/2016	Fe	4.84	mg/L	1	4.84	N/A	N/A
D	1/5/2016	pH	5	s.u.	6.0-9.0	1.0 under	6.5-8.5	1.5 under
D	1/5/2016	TSS	106	mg/L	100	1.06	N/A	N/A
				Total Exceedances		3	1	



**Exhibit 2**



Robertson's Sun City  
Exhibit 2

Riverside Municipal Airport Riverside, CA Rain Station KRAL		
Date	Day of Week	Daily Precipitation (Inches)
6/31/2011	Sunday	.34
10/5/2011	Wednesday	.46
11/4/2011	Friday	.33
11/12/2011	Saturday	.15
12/12/2011	Monday	.43
1/21/2012	Saturday	.20
1/23/2012	Monday	.21
2/15/2012	Wednesday	.36
3/17/2012	Saturday	.52
4/11/2012	Wednesday	.21
4/13/2012	Friday	.18
12/13/2012	Thursday	.49
12/24/2012	Monday	.22
12/29/2012	Saturday	.13
1/24/2013	Thursday	.19
1/25/2013	Friday	.37
1/26/2013	Saturday	.19
2/8/2013	Thursday	.49
3/8/2013	Friday	.46
<b>Total Rain Days</b>		<b>19</b>



Robertson's Sun City  
Exhibit 2

<b>March Air Reserve Base Riverside, CA Rain Station KRIV</b>		
<b>Date</b>	<b>Day of Week</b>	<b>Daily Precipitation (Inches)</b>
7/30/2013	Friday	.38
10/9/2013	Wednesday	.42
11/21/2013	Thursday	.20
11/22/2013	Friday	.15
12/7/2013	Saturday	.18
12/19/2013	Thursday	.18
2/28/2014	Friday	1.08
3/1/2014	Saturday	.43
3/2/2014	Sunday	.25
4/2/2014	Wednesday	.13
4/25/2014	Friday	.16
4/26/2014	Saturday	.18
8/3/2014	Sunday	.20
8/20/2014	Wednesday	.27
11/1/2014	Saturday	.17
12/2/2014	Tuesday	.77
12/3/2014	Wednesday	.51
12/4/2014	Thursday	.28
12/12/2014	Friday	.73
12/13/2014	Saturday	.20
12/17/2014	Wednesday	.13
1/11/2015	Sunday	.12
1/26/2015	Monday	.29
1/30/2015	Friday	.11
2/22/2015	Sunday	.12



Robertson's Sun City  
Exhibit 2

2/23/2015	Monday	.19
3/1/2015	Sunday	.12
5/8/2015	Friday	.28
5/14/2015	Thursday	.15
5/15/2015	Friday	.12
7/18/2015	Saturday	.40
7/19/2015	Sunday	.97
9/15/2015	Tuesday	.43
10/5/2015	Monday	.27
10/14/2015	Wednesday	.12
10/15/2015	Thursday	.21
10/22/2015	Tuesday	.14
1/5/2016	Tuesday	.78
1/6/2016	Wednesday	.68
1/7/2016	Thursday	.64
1/31/2016	Sunday	.12
1/17/2016	Wednesday	.10
3/7/2016	Monday	.14
3/11/2016	Friday	.27
4/8/2016	Friday	.22
4/10/2016	Sunday	.49
4/25/2016	Monday	.19
5/6/2016	Friday	.27
	<b>Total Rain Days</b>	<b>48</b>